United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

74-1235

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P/S

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

ABDON ACEVEDO, et al.,

Appellants,

-v-

NASSAU COUNTY, et al.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PLAINTIFF'S APPENDIX PART I, pp. 1a-399a

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

ABDON ACEVEDO; LOUIS DE GIACOMO; ADELE GRANT; JUDITH LUSTERMAN AND DON-DAVID LUSTERMAN; ALICE PERLMAN AND JULIUS PERLMAN; BETTY ANN REDFERN; RUBY WILLIAMS; BALDWIN COUNCIL FOR HUMAN RIGHTS; and LONG ISLAND REGION NAACP; on behalf of themselves and all others similarly situated,

Plaintiffs,

-v.-

NASSAU COUNTY, NEW YORK, its officials, employees and agents; RALPH G. CASO, as County Executive of Nassau County; BOARD OF SUPERVISORS OF NASSAU COUNTY; JOHN W. BURKE, GEORGE B. COSTIGAN, ALFONSE D'AMATO, ANDREW DI PAOLA, FRANCIS T. PURCELL and MICHAEL TULLY, as members of the Board of Supervisors; TOWN OF HEMPSTEAD, NEW YORK, its officials, employees and agents; TOWN BOARD OF THE TOWN OF HEMPSTEAD; JAMES D. BENNETT, ALFONSE D'AMATO, ANTHONY C. IMBARRATO, LEO F. MCGINITY, JOSEPH P. MUSCARELLA, GREGORY P. PETERSON, FRANCIS T. PURCELL and EUGENE WEISBEIN, as members of the Town Board; ENVIRONMENTAL PROTECTION AGENCY; WILLIAM D. RUCKELSHAUS, as Administrator of the Environmental Protection Agency; GENERAL SERVICES ADMINISTRATION; ROD L. KREGER, as Acting Administrator of the General Services Administration; METROPOLITAN TRANSPORTATION AUTHORITY; and WILLIAM J. RONAN, as Chairman of the Metropolitan Transportation Authority,

Defendants.

COMPLAINT

Civil Action No.

72C 305

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Plaintiffs, for their complaint herein, aver:

I. STATEMENT OF THE CASE

1. Approximately one-half (500 to 600 acres) of Mitchel Field in Nassau County, New York is vacant and developable (hereinafter reference to "Mitchel Field" is to this vacant, developable acreage, not to Mitchel Field as a whole, unless otherwise indicated). As such it is perhaps the most important and most valuable tract of undeveloped land in the United States. It is also an enormous public asset, being owned by the County of Nassau (hereinafter sometimes referred to as "the County") and situated largely in the Town of Hempstead (hereinafter sometimes referred to as "the Town"). The County, with the active cooperation of the Town and with the acquiescence and support of certain agencies of the United States Government, is embarked on an ad hoc, unplanned, capricious, altogether wasteful and irresponsible "development" of Mitchel Field which denies fundamental legal rights to the citizens of the Town, the County and the region in which the Town and County are located, which perpetuates and increases discrimination and oppression against various protected classes of citizens, and which illegally spends taxpayers' moneys and wastes public assets.

2. The aforesaid ad hoc, unplanned, capricious, altogether wasteful and irresponsible "development" of Mitchel Field is hereinafter sometimes referred to as "the County's wasting of Mitchel Field". Reference to only the County is for convenience but nevertheless includes the roles which the Town of Hempstead and certain agencies of the United States Government--to wit, the General Services Administration and the Environmental Protection Agency--have played and are playing in that wasting, as will be explained more fully below.

3. The County's wasting of Mitchel Field includes, but is not limited to: (a) a deliberate refusal to develop housing on Mitchel Field to meet the critical housing needs of citizens of the County, the Town and the region; (b) a deliberate refusal to develop Mitchel Field in accordance with a comprehensive plan for such development;

and (c) spot development of various portions of Mitchel Field pursuant to determinations which frequently change in response to political pressure, which are irrational and erratic, which are devoid of proper planning principles and which, upon information and belief, are sometimes based on personal idiosyncrasies, prejudices and political obligations of the governmental officials making the decisions.

4. The County's ad hoc, unplanned, capricious, wasteful and irresponsible "development" of Mitchel Field:

(a) Forces thousands of low and moderate-income persons in the County and the Town to live in indecent, inadequate housing in an unhealthy, oppressive environment because there are no decent housing opportunities for them;

(b) Excludes black and Spanish-speaking people and white and other persons of low and moderate income (hereinafter sometimes referred to as "minority oppressed persons") from living within the County and the Town and from having equal access to employment opportunities in the County and Town;

(c) Denies to veterans, blue-collar workers, senior citizens, young married couples and other classes of low and moderate-income persons, living both within and without the County and Town, equal housing and equal employment opportunities within the County and the Town, and denies needed housing to middle-income residents who are often forced to live in illegal housing;

(d) Fails to help meet a desperate shortage of decent, adequate housing in the County, Town and region, thereby perpetuating conditions of oppression and discrimination, forcing too great a proportion of income to be spent on housing, perpetuating the provision of inferior services to the residents of such areas and requiring the unnecessary and wasteful expenditure of County, Town, State and Federal funds;

(e) Wastes hundreds of thousands of dollars of County, and therefore taxpayer, moneys already spent for comprehensive planning of Mitchell Field which the County is ignoring

and refusing to implement;

(f) Denies millions of dollars in revenues to the County and the Town--and denies the accompanying tax relief to taxpayers of the County and the Town--which would result from a comprehensively planned use of Mitchel Field; and

(g) Fails and refuses to develop Mitchel Field so as to help meet other critical needs of the citizens of the County, Town and region--needs which can be met only by the intelligent assessment of housing, transportation, environmental, economic and other requirements that result from a comprehensively planned use of Mitchel Field.

5. This is a class action for: (a) a declaratory judgment that the County's wasting of Mitchel Field is discriminatory and irresponsible in violation of the Constitution of the United States and of certain statutes of the United States; (b) an injunction requiring the development of Mitchel Field in accordance with a comprehensive plan which includes a significant amount of housing for various income groups; (c) an injunction prohibiting the further development of Mitchel Field except in accordance with such a comprehensive plan; (d) an injunction requiring zoning of Mitchel Field by the Town so as to accomplish development of Mitchel Field in accordance with such a comprehensive plan; (e) an injunction requiring the Metropolitan Transportation Authority (hereinafter "MTA") to do what is necessary within its authority to provide the means for transportation required for implementation of such a comprehensive plan; and (f) an injunction prohibiting the General Services Administration (hereinafter "GSA") and Environmental Protection Agency (hereinafter "EPA") from providing further funds to the County and the Town, from undertaking any construction on Mitchel Field, and from participating further in the development of Mitchel Field until and unless such development includes the requisite housing and comprehensive planning mandated by law.

6. Suit is brought to obtain and enforce plaintiffs' rights, privileges and immunities under: (a) the First and Thirteenth

Amendments and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States; (b) 42 U.S.C. §§ 1981, 1982, 1983, 2000d, 3604, 3608, 4231; (c) Executive Order No. 11512; and (d) June 1971 Memorandum of Understanding between the GSA and the Department of Housing and Urban Development (hereinafter "HUD").

II. JURISDICTION

7. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1343 and by 42 U.S.C. § 3612. Insofar as this action seeks declaratory relief it is brought pursuant to 28 U.S.C. § 2201.

8. Among the injuries suffered by plaintiffs as a result of the County's wasting of Mitchel Field are the denial of decent, adequate housing; the denial of equal employment opportunities; the unlawful expenditure of hundreds of thousands of dollars in County, Town, State and Federal (and, therefore, taxpayer) moneys; the wasting of hundreds of thousands of plaintiffs' dollars and denial to plaintiffs of millions of dollars in tax relief; the denial of necessary services or the provision of inferior services to residents of the County and Town; and the undue enrichment, at plaintiffs' expense, of certain construction contractors and business developers. Such injuries and others recited below have a value to each named plaintiff and to each member of the class they represent of a sum in excess of $10,000. The amount in controversy herein therefore exceeds $10,000 as to each plaintiff.

III. DEFINITIONS

9(a). "Spanish-speaking", as used herein, includes persons whose primary language is Spanish or persons whose place of origin is Spanish-speaking or persons of Spanish surname or a combination thereof. In the civil rights vernacular they are sometimes referred to as "brown". In the United States Census they are identified as of Spanish origin.

9(b). "Low and moderate income", as used herein, means income levels which would: (1) qualify the persons earning such

income for local, state or federally assisted housing, and (2) prevent such persons from obtaining decent, adequate housing in the County or Town without such assistance. The term "moderate income" is separate and distinct from "middle income" which is a range of income that falls between moderate and upper income.

9(c). "Indecent, inadequate housing", as used herein, includes, but is not limited to, housing which is substandard, unsanitary, overcrowded, unsafe, grossly inadequate for one's needs, inferior, deteriorating, not properly maintained, lacking necessary facilities, and/or uninhabitable.

9(d). "Oppressive, unhealthy environment", as used herein, includes, but is not limited to, environmental conditions which are congested, rundown, usually segregated by race or economic class, unsafe, frequently in slum ghettoes, ugly, lacking the amenities, and/or otherwise so lacking in the positive qualities of life as to be damaging to the physical, mental and emotional well-being of the residents thereof.

9(3). "Comprehensive plan", as used herein, means the planned development of land, pursuant to a rational analysis of alternatives, so as to use the land in unified, coordinated, inter-related ways that will serve the general welfare by meeting the essential needs of the citizens in the region in which the land is located. Thus a comprehensive plan in modern society must respond not only to the conventional appropriate physical uses of the land in question but to social, cultural, economic, environmental, recreational and other relevant needs. Social needs consistent with the general welfare can only be met by land uses which are racially and economically inclusionary.

9(f). "Region", as used herein unless otherwise indicated, means the New York Metropolitan Area in which the County and Town are located and includes the five counties of New York City plus the counties of Nassau, Suffolk and Westchester. The region is an expanding one and is defined by some governmental and public interest organizations to include Bergen County, New Jersey, Rock-land County, New York, and southern Fairfield County, Connecticut,

as well as other places, and it is apparent that housing, employment and land-use opportunities and population changes in those places do affect the housing, employment, land-use and population conditions in the County and Town and vice-versa.

IV. THE PLAINTIFFS

A. In General

10. The named individual plaintiffs and the individuals who are members of or are represented by the organizational plaintiffs are citizens of the United States and residents of the State of New York and the Counties of Nassau and Suffolk. Many are also residents of the Town of Hempstead. Most such individuals are also taxpayers of the Town, County, State of New York (hereinafter and heretofore the "State") and United States.

11(a). The organizational plaintiffs--the Baldwin Council for Human Rights and the Long Island Region NAACP--are directly engaged in those activities and directly assert those rights which are protected by the constitutional and statutory provisions that defendants are violating. Those organizations are also the medium through which their members and the individuals the organizations represent seek to make more effective the assertion of their own rights protected by the aforementioned constitutional and statutory provisions.

11(b). The individual members of and persons represented by the organizational plaintiffs are directly aggrieved and seriously adversely affected by the County's wasting of Mitchel Field, as described herein. Such individual members and persons are themselves without the legal, financial and other resources to eliminate those conditions of discrimination and oppression under which they must live as a result of the wasting of Mitchel Field and hence rely upon the organizational plaintiffs to do so.

12. All or virtually all of the plaintiffs, including the members of and persons represented by the organizational plaintiffs, pay taxes to the County, Town, State and United States and receive services from such governments. As a result of the

County's wasting of Mitchel Field, their tax moneys have been and are likely to be extracted and spent by those units of government in violation of the specific constitutional and statutory provisions sued upon herein, including those constitutional protections against the abuses of legislative power.

B. Specific Plaintiffs

13. Plaintiff Abdon Acevedo and his wife Rosario are Spanish-speaking. They have 3 young children and live in the Town and County in indecent, inadequate housing in an unhealthy, oppressive environment: a 4-room, dilapidated apartment badly in need of repair for which the Acevedos pay a rent of $165 per month. Mr. Acevedo is a blue-collar worker in a local factory and earns a low income, receiving supplemental public assistance. Plaintiff Acevedo wants the opportunity, on behalf of himself and his family, to live in decent, adequate housing they can afford in the Town and County. He also wants the opportunity that such housing can provide to gain access to better job opportunities. Mr. Acevedo has searched diligently for such housing to no avail. The Acevedos are presently denied such opportunities by virtue of the County's wasting of Mitchel Field.

14. Plaintiff Louis De Giacomo and his wife Rose are white and elderly, being 80 and 70 years of age, respectively. They live in emergency housing--one room in a motel in the Town and County. Mrs. De Giacomo, despite her age, works full time in a local factory and earns a low income while Mr. De Giacomo, despite several health problems, is endeavoring to return to his earlier occupation as a real estate broker. Their motel room, which they have endured since 1968, costs the County $600 per month and is terribly detrimental to their health, being small, cramped, impersonal, lacking privacy, lacking kitchen facilities. The De Giacomos have lived in the County for more than 30 years and would like to spend the remainder of their lives there, but in decent, adequate housing they can afford in the Town and County. Mr. De Giacomo has searched diligently for such housing to no avail. The De Giacomos are presently denied such housing by

virtue of the County's wasting of Mitchel Field.

15(a). Plaintiffs Adele Grant, Betty Ann Redfern and Ruby Williams (hereinafter "the motel plaintiffs") are black and live with their children in motel rooms in the Town and County. Plaintiff Grant has 4 children and they live in 2 motel rooms. Plaintiff Redfern with 3 children and plaintiff Williams with 3 children each live in a single motel room. The motel plaintiffs have endured their awful living conditions for from 6 to 17 months. They are of low income, being on public assistance, and are typical of hundreds of such persons who must live in motels at an average cost, upon information and belief, of $20 to $28 per day, such cost being born in whole or in large part by Nassau County and, ultimately, by local taxpayers, including plaintiffs.

15(b). The motel plaintiffs live under the worst kind of conditions, being crowded into single small rooms which must serve for living, sleeping, playing and all other needs. They are characterized by ugliness, too little heat, no kitchen facilities, no phones, impersonal and inadequate furnishings, insufficient bed clothes, and the constant din and congestion and lack of privacy which cause so much mental, emotional and physical suffering.

15(c). The motel plaintiffs were forced into their present bad living conditions by loss of their own homes (e.g., by condemnation, by eviction) and by the dearth of decent, adequate housing at a cost they can afford. They have searched diligently for such housing to no avail. Their housing opportunities are made even more limited by the discrimination against them by private landlords, owners and real estate brokers. The motel plaintiffs want the opportunity, on behalf of themselves and their families, to live in decent, adequate housing they can afford. They are presently denied such opportunities by virtue of the County's wasting of Mitchel Field.

16(a). Plaintiffs Judith and Don-David Lusterman are white, a husband and wife who are residents of the Town of Hempstead.

Mr. Lusterman is a professor at Hofstra University and Director of Counseling and Psychology for the Upward-Bound Program at Hofstra. Hofstra University is located partly on and partly directly opposite Mitchel Field.

16(b). The Lustermans are of middle-income and live with their three children in a single-family house on a small plot of ground 40 feet wide. They are Jewish and are presently being, and have for some time been, subjected to considerable Anti-Semitic harassment by certain of their neighbors. The Lustermans want the opportunity to live in the Town in decent, adequate housing they can afford in a community truly integrated by race, national origin, ethnic background and economic status, free from their harassment as Jews and conveniently near to the University where Mr. Lusterman teaches. They are presently denied such opportunity by virtue of the County's wasting of Mitchel Field.

17(a). Plaintiffs Alice and Julius Perlman are white, a husband and wife who are residents of the Town of Hempstead where Mr. Perlman operates a small business. The Perlmans are both in their 60's and earn a low income, much of it of a fixed nature. Mrs. Perlman works part-time at Hofstra University which is located partly on and partly directly opposite Mitchel Field. The Perlmans live alone in a single-family house they own. It is a house which is now far too large for their needs, is costly to maintain and is difficult for them to repair and take care of themselves.

17(b). The Perlmans want the opportunity to live in the Town in decent, adequate multi-family housing they can afford, where the responsibility for maintenance and repair and the payment thereof will be born by the landlord. They are presently denied such opportunity by virtue of the County's wasting of Mitchel Field.

18(a). The Baldwin Council For Human Rights (hereinafter sometimes referred to as the "Council") is a not-for-profit membership association organized in 1963 to create equal housing opportunities in and seek integration of Baldwin, New York,

located in Nassau County and in the Town of Hempstead. Its membership consists of black and white residents of the Baldwin area, including a number of black families who were able to move into the Baldwin area by virtue of the actions of the Council.

18(b). Over the years the Council has represented dozens of black families at all levels of income who were seeking to move from ghettos in New York City or from ghettos in Nassau County to decent, adequate housing in the County, especially in Baldwin or neighboring communities. The Council has also cooperated with similar local open housing organizations in many other predominantly white, middle-class Nassau and Suffolk County communities to help those organizations in turn assist black families to find decent, adequate housing in their communities. More recently the Council and other such organizations have stood ready to provide comparable help for Spanish-speaking families.

18(c). In 1963 Baldwin was an all-white or virtually all-white community. Since then it has become integrated in a very limited way as a result of the movement into Baldwin of several black families, a movement made possible or assisted in a number of instances by the actions of the Council. Similar extremely gradual changes have occurred in neighboring communities and elsewhere in Nassau and Suffolk Counties.

18(d). Yet the Council and like organizations in Nassau and Suffolk Counties have found that integration of their communities remains relatively slight and that concentration of blacks and Spanish-speaking people in indecent, inadequate housing in surrounding pocket ghettos (for example, in places like Roosevelt, the Village of Hempstead and Freeport) remains at as high a level as ever. E.g., in Baldwin there are only approximately 18 black families (about 63 persons) and probably no Spanish-speaking families out of a population of approximately 35,000 people. The two basic reasons for this housing integration stagnancy are that: (a) there is little or no low and moderate-income housing in the County and the Town which blacks can afford except in the ghettos; and (b) in a great many communities, such as Baldwin and its South

Shore neighbors, in the County and the Town there is little or no vacant, developable land for new housing and so the opportunities for integration exist, at best, only as existing housing becomes vacant, a factor which cannot begin to meet the need for low, moderate and middle-income housing for black and Spanish-speaking people. It is, therefore, essential to the Council and similar organizations that Mitchel Field be developed in such a way as to provide a significant amount of housing opportunity for black and Spanish-speaking and other low and moderate-income persons.

19(a). Plaintiff Long Island Region NAACP is an affiliate of the National NAACP which, since 1909, has sought to improve the economic conditions of minority oppressed persons by, among other things, obtaining equal housing, employment, and educational opportunities. The Long Island Region NAACP (hereinafter "NAACP") has been endeavoring to accomplish the same goals on Long Island.

19(b). The NAACP is made up of 15 local chapters, located in both Nassau and Suffolk Counties. A number of the Chapters are located within the Town, e.g., Hempstead-Uniondale, Lakeview, Freeport-Roosevelt. The NAACP draws its membership from among the residents of those communities in which chapters have been founded; however, the NAACP works to serve not only its members but all minority oppressed persons on Long Island, including those living in the heavily congested ghettos that pockmark Nassau County.

19(c). The NAACP has been particularly active in the field of housing for the last decade, helping to integrate communities of all economic levels and working for the construction of low-income housing. The NAACP has long sought the construction of a significant amount of low and moderate-income housing on Mitchel Field. The NAACP joins in this legal action in order to open up desperately needed equal housing and employment opportunities for its members and the other minority oppressed persons whom it represents. Those opportunities are presently denied such persons by virtue of the exclusionary zoning of the defendant exclusionary communities.

V. THE PLAINTIFF CLASS

20(a). This is a class action under Rule 23 of the Federal Rules of Civil Procedure, plaintiffs suing on behalf of themselves and all others similarly situated. There are two classes, a housing class and a taxpayer class.

20(b). Many sub-classes comprise the housing class--e.g., persons who live in the County or the Town in indecent, inadequate housing and would like the opportunity to move to better housing within the County or the Town; persons who now live outside the County and the Town in indecent, inadequate housing in an oppressive, unhealthy environment and would like the opportunity for good housing in a nice community; black and Spanish-speaking people who, by virtue of their race or national origin, are denied equal housing opportunities in the County and the Town; persons who work in (and sometimes for) the County or the Town but cannot live there, at least in decent, adequate housing (for example, blue-collar workers); persons who attend college in the County or the Town but cannot live there, at least in decent, adequate housing; persons who now live outside the County and the Town and simply want the opportunity to consider moving to them; elderly persons now on fixed or otherwise limited incomes who can no longer afford to live in the County or the Town; young married couples who, having grown up in the County or the Town, find they cannot afford to live there when they move out of their parental homes; veterans who, having left their parental homes in the County or the Town to serve this nation in its Armed Forces, return as independent men and women only to find there is no longer any housing opportunity for them in the County or Town; open housing and similar organizations which represent the interests of and/or are comprised of some of the aforementioned sub-classes; even middle-income persons who, though having some housing opportunities in the County and the Town in comparison to the dearth of low and moderate-income housing, are denied the alternative housing opportunities that a comprehensively planned Mitchel Field would provide.

20(c). Those and other housing sub-classes form a housing class herein which is comprised of persons who are excluded from living in the County and the Town or are otherwise denied equal housing opportunities (and, therefore, equal employment opportunities) in the County and the Town by virtue of their race or economic status and the County's wasting of Mitchel Field.

20(d). The taxpayer class herein is comprised of: (1) all payers of taxes to the County and/or the Town; and (2) all recipients of services provided by the County and/or the Town and paid for out of taxes and other revenues received by the County and/or the Town. The tax money paid by such class has been extracted and spent by the County and the Town in violation of specific federal constitutional and statutory law and in a way abusive of legislative power by virtue of the County's wasting of Mitchel Field. In addition, for the same reason the class includes all payers of taxes to the State of New York and the United States Government inasmuch as those units of government are supporting or consenting to the wasting of Mitchel Field in violation of federal constitutional and statutory law.

20(e). Furthermore: (1) the classes are so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the classes; (3) the claims of plaintiffs are typical of the claims of the classes; (4) plaintiffs will fairly and adequately protect the interests of the classes; (5) defendants have acted and have refused to act on grounds generally applicable to the classes, thereby making appropriate final declaratory and injunctive relief with respect to the classes as a whole; and (6) the questions of law and fact common to the members of the classes predominate over any questions affecting only individual members, and a class action is superior to other available methods for a fair and efficient adjudication of the controversy.

20(f). Except where otherwise indicated, the term "plaintiffs" as used herein refers to the classes of persons represented by the named plaintiffs as well as to the named plaintiffs themselves.

VI. THE DEFENDANTS

A. In General

21(a). Each defendant governmental body is sued in its own capacity and as representative of its officials, employees and agents.

21(b). Each individual defendant is sued in his or her representative rather than individual capacity.

21(c). Except where otherwise indicated, whenever the term "defendants" is used herein it shall refer to all defendants. Reference herein to the "defendants" or to any particular defendant is understood to refer to defendants' or said defendant's officials, agents, employees and successors in interest as well as to the named defendants themselves.

21(d). Whenever the defendants are referred to in this complaint, either collectively or by name, as having committed some act of commission or omission, it is understood that such act was performed by such defendants or by their predecessors in office.

B. Specific Defendants.

22. Defendant the County of Nassau is a major political subdivision of the State of New York comprised of a population residing in housing located on land situated within the County. The County lies between and is contiguous to the City of New York and the County of Suffolk. Mitchel Field is located entirely within Nassau County and is owned by the County except as hereinafter noted. Under the laws of the State of New York the County has the power and authority to dispose of its real property, including Mitchel Field, by sale, transfer or lease to private parties, municipalities (including the Town), the State of New York, and/or the United States Government and any agency or department thereof for any lawful purpose, including housing.

23. Defendant Nassau County Board of Supervisors (hereinafter sometimes referred to as the "Board") is the legislative and execu-

tive body of the County and as such determines and implements the development and usage of Mitchel Field. Such determinations and implementations are carried out by and through the individual members of the Board, defendants John W. Burke, George B. Costigan, Alfonse D'Amato, Andrew Di Paola, Francis T. Purcell and Michael Tully. Such determinations and implementations are responsible for the County's wasting of Mitchel Field.

24. Defendant Ralph G. Caso is the County Executive of Nassau County. As such he is the chief executive officer of the County, responsible for executing and enforcing the decisions of the Board, and presiding officer of the Board. During his administration, defendant Caso, together with defendant Francis T. Purcell, Presiding Supervisor of the Town, has been the prime instigator and moving force behind that much of the County's wasting of Mitchel Field that has occurred and is occurring in the course of that administration.

25. Defendant Town of Hempstead is one of three lesser equal political subdivisions, known as Towns, which comprise the County. Mitchel Field is located entirely within the Town and thus it is the Town whose zoning ordinance controls the use to which Mitchel Field's land can be put. The Town has rezoned part of Mitchel Field already at the County's request in order to enable the County to indulge in its present ad hoc, unplanned, capricious, wasteful and irresponsible "development" of Mitchel Field and, upon information and belief, the Town intends to cooperate with the County in the further rezoning of Mitchel Field land so as to permit the continued wasting of Mitchel Field.

26. Defendant Town of Hempstead Town Board is the body of the Town responsible for the rezoning of land, including Mitchel Field, within the Town and has done and will do the rezoning referred to in paragraph 25 hereof. Such rezoning is carried out by and through the individual members of the Town Board, defendants James D. Bennett, Alfonse D'Amato, Anthony C. Imbarrato, Leo F. Mc Ginity, Joseph P. Muscarella, Gregory P. Peterson, Francis T. Purcell and Eugene L. Weisbein.

27. The Environmental Protection Agency is an agency of the United States Government which, pursuant to its authority under federal law, has made a financial commitment to the County to pay $90,000,000 toward the cost of a sewer system in a part of the County. Such a commitment has been made notwithstanding that to do so in the face of the County's wasting of Mitchel Field violates federal statutory law and maintains existing discrimination in violation of other federal constitutional and statutory provisions. Defendant William D. Ruckelshaus, as Administrator of the EPA, is its chief executive officer and responsible for the aforesaid financial commitment.

28. The General Services Administration is an agency of the United States Government which, pursuant to its authority under federal law, has undertaken to construct a $74,000,000 federal office building on Mitchel Field. Such an undertaking, in view of the County's wasting of Mitchel Field, violates federal statutory law and will create discrimination in violation of other federal constitutional and statutory provisions. Defendant Rod L. Kreger, as Acting Administrator of the GSA, is its chief executive officer and responsible for the aforesaid undertaking.

29. The Metropolitan Transportation Authority is a public corporation of the State of New York which develops and maintains commuter and mass transportation facilities and related services within the Metropolitan Commuter Transportation District including the County. If Mitchel Field is to be comprehensively planned and developed, including a significant amount of housing, as required by federal law, the MTA's participation is necessary in order to assure essential transportation facilities. Defendant William J. Ronan, as Chairman of the MTA, is its chief executive officer and would be responsible for directing the MTA's participation in the development of Mitchel Field.

VII. MITCHEL FIELD'S TORTURED HISTORY

* [30. The County's and Town's actions during the last ten years make it clear that the present and anticipated uses of Mitchel Field have emerged by default rather than by comprehensive planning intended to create inter-related uses serving the public welfare.

31. In November 1960 the Air Force, which had long used Mitchel Field as an air base, announced that it was terminating its operations at the Field. Eight months later, GSA announced that 1122 acres of land in Nassau County, all but 47 acres of the Field, were excess federal property which it was authorized to dispose of.

32. Even before the formal GSA announcement, the County had decided that it wanted to acquire as much of Mitchel Field as was possible. The then County Executive appointed a committee (the Moses Committee) in April 1961 to determine how the land should be used. Even before the committee presented its report, however, the County Board of Supervisors applied to the Department of Health Education & Welfare and asked that Department to obtain 235 acres of the Field from GSA under a special statutory provision which would then permit the land to be turned over to the County free of charge for educational purposes, in this case Nassau County Community College. A deed for 135 acres of land to be used by the College was executed by the County and the federal government on October 19, 1962. On that same day, under a similar arrangement, the federal government also deeded 88 acres of Mitchel Field to Hofstra University. Subsequently both institutions obtained additional acreage from GSA.

33. Meanwhile the County debated what to do with the rest of the land. An airport was considered and rejected. The Moses Committee proposal stressed a cultural center and included residential, industrial, commercial and park uses. In 1962, GSA rejected the Moses Committee's plans for Mitchel Field, announcing a few months later that it would consider no plans which involved]

*Brackets indicate material 19-A stricken by court order of August 15, 1972.

[the kinds of educational and cultural uses that might entitle the County to discount on the price of the rest of the land. Eventually, in June 1963, the County bought the 435 acres of the Field then for sale at the market price of $13,628,000.

34. Soon after the purchase, the then County Executive replaced the Moses Committee with a new committee. He charged that new committee with the task of planning the use for the land Nassau had just bought. In April 1964 the County Board of Supervisors rejected the committee's proposal for a theatre, fine arts gallery, museum, social center and library. A few months later, in December, 1964, the Board of Supervisors approved the expenditure of $9,600,00 to construct a coliseum. (That coliseum would eventually cost the County more than $36,000,000 to complete.) At the time of the Supervisors' vote on the coliseum, then County Executive Eugene Nickerson acquiesced to their demand that they be allowed to vote on each separate project slated for Mitchel Field rather than on an over-all plan.

35. In 1965 GSA announced that it would soon be able to dispose of another 200 acres of Mitchel Field land. The County, still undecided about how to use the land it had already purchased, announced that it was interested in the new parcel. Then County Executive Nickerson said that he would submit a comprehensive plan for its development. The plan, which took more than a year to prepare, included a proposal for 10,000 units of housing. Before the County plan was revealed, the Town announced that it had its own plans for the 200 acres. Not only did it have plans; it determined to buy the land itself, rather than work with the County, and submitted the necessary application to GSA. GSA announced that it would sell the land, the acreage of which was reduced by prior commitments, to the applicant with the best plan. It subsequently sold the land to the County for approximately $2,000,000.

36. Now the owner of some 570 acres of land at Mitchel Field, the County decided to set up a special corporation to develop it. Consequently the Mitchel Field Development Corpora-]

[tion (hereinafter MFDC) was chartered in January 1968, as was the Nassau Coliseum, Inc. whose purpose was to build and manage a coliseum. Inactivity and mismanagement by MFDC and scandals and mismanagement by Nassau Coliseum, Inc. led to their dissolution in early 1971. In its three years of existence MFDC hired consultants to prepare design and site plans for Mitchel Field. During the last year of its existence, the MFDC began to alter its consultants' design and the anticipated development schedule. In all, it signed only one contract for development at Mitchel Field; that contract allowed construction of a bank. The MFDC also entered into a short term lease permitting a moving company to use some of the Mitchel Field land for offstreet parking. Since the dissolution of the MFDC, its consultants' plans have been shelved. Defendant Caso has vested responsibility for the further development of the Field in the County's Department of Commerce and Industry, which has never had experience in the planning and development fields. The County has recently begun work on a transient hotel to be built at Mitchel Field.

37. At present the County owns approximately 575 acres of land at Mitchel Field which, but for the Coliseum and bank, are undeveloped. The hotel is to occupy part of that vacant land. In addition, the County owns about 225 additional acres which, under the terms of its contracts with the federal government, it is committed to use for Nassau County Community College for 20 years. Hofstra University has approximately 150 acres. The State has about 50 acres expressly intended for road widenings and related transportation uses. Another 40 to 60 acres have been specifically deeded by the federal government to various other agencies, e.g., the Nassau County Vocational Educational and Extension Board. GSA retains about 75 acres for construction of a federal office building and post office.]

VIII. CRITICAL NEED FOR HOUSING IN NASSAU COUNTY AND THE TOWN OF HEMPSTEAD*

A. Population and Income Data

38. Nassau County has a current population of 1,428,080, of whom only 65,679, or 4.6%, are black. The Town of Hempstead has 46,784 blacks in a total population of 750,872. These blacks represent 6% of the Town's population. Yet the County and the Town are contiguous to New York City, which is 21% black. Significantly, Queens, the New York City county which is comparable to Nassau in size and which borders Nassau, has a black population equal to 13% of its total population. Black people now make up 11% of the population of the United States.

39. While hundreds of thousands of Puerto Rican and other Spanish-speaking persons have settled in New York City in recent years, relatively few live in the County or the Town. Their numbers are so low in the County and Town that no agency has tabulated them as a discrete population group. Yet Spanish-speaking persons constitute 5% of the total population of the continental United States and a significant percentage of the population of New York City.

40. Nassau is a very wealthy county. According to the 1960 census, it enjoyed the highest median family income of any county in the New York - New Jersey Metropolitan Area, an area which is defined to include counties like Westchester and Bergen, popularly thought of as "rich". Although the full results of the 1970 census on income are not yet available, the first reports indicate that during the last decade Nassau's median family income has increased by more than 30% to almost $13,000.

41. The fact that Nassau has such a high median family income does not mean that the county lacks for persons of low and moderate income, although it is clear that the relative number of families of low and moderate income of all races, colors and national origins who live in the County is significantly less than the relative number of such families in New York City, in the region and in the United States as a whole. Approximately 200,000 people

*Statistics for the Town refer, in this section, not only to the defendant Town but to the incorporated area within it.

[(or one out of every seven County residents) live in families whose annual income is under $5,000. On information and belief, approximately 40% of the County's residents live in families which earn between $5,000 and $10,000 a year. It is these two groups which the housing crisis, described hereafter, hits hardest among those living in the County. More specifically, within these groups it is the black and Spanish-speaking, the elderly, and those just leaving home who suffer most acutely from the lack of suitable housing at rents or sales prices which they can afford.

B. Housing Stock

42. There is no or virtually no housing available in the County and Town for black or Spanish-speaking people or for persons of low or moderate income.

43. The dominant form of housing in both the County and the Town is the single family detached house. The average value of owner occupied single-family houses in the Town is $31,375, while in the County it is $33,289. New homes are considerably more expensive, generally starting at $35,000 and with the dominant price range between $35,000 and $50,000. Applying the generally accepted rule that housing should not cost more than twice income, it is clear that no one earning under $17,000 a year can compete for new housing in the Nassau market.

44. Older homes are not "trickling" down to those with moderate and low incomes because they simply are not being sold. In 1960 the vacancy rate in Nassau was an unhealthy 1.4% as compared to the ideal rate of 5%. In 1970 the rate was still worse, pegged at a miserable .8%. Latest reports indicate that only .3% of Nassau's houses were for sale during 1971, thereby providing virtually no opportunities for movement either into the County or within the Town despite increasing demand for employees.

45. Multi-family dwellings are permitted in only a few locations in the Town and County. Because of the scarcity of apartments in relation to demand, rents are very high. In fact, Nassau has had the highest average contract rent of any county in the New]

York-New Jersey-Connecticut Region for the last 10 years. Median contract rent, which includes rent for everything from a single room in a boarding house to one of the few six room apartments in the County, is $159.

46. In addition to the fact that the absolute number of apartments is low, there are almost no apartments for families with children. Approximately two-thirds of the apartment units built in Nassau in the last decade are efficiency or one-bedroom dwellings. The average rent for one bedroom apartments built in the Town during the last decade is $185.

C. Housing Conditions

47. Such sales and rental prices and bedroom limitations as heretofore described make it inevitable that only a relatively few minority oppressed persons live in the Town and County. Of those who do, all or virtually all are confined to indecent, inadequate housing which is frequently over-crowded. Black and Spanish-speaking persons, in particular, are segregated into oppressive enclaves.

48. Between 15,000 and 16,000 dwelling units in Nassau are over-crowded with illegal double and triple occupancies in single family homes. While the County-wide percentage of over-crowded homes is 4%, certain communities are characterized by significant over-crowding. E.g., Roosevelt and Inwood in the Town of Hempstead and New Cassel in North Hempstead: 10%; and Lakeview, also in the Town: 9%.

49. Some 15,000 units of housing in the County are deteriorating or substandard, requiring replacement or rehabilitation. Again, such units are concentrated in particular communities. Of the County's 114 communities, substandard housing is most prevalent in 13; seven are in the Town: Elmont, Freeport, Hempstead Village, Inwood, Lakeview, Rockville Centre, and Roosevelt. Nassau and Suffolk Counties together have approximately 42,000 deficient units, more deficient units than the total number of housing units in each of 2/3 of the counties in New York State. Nassau cannot

even begin a program of housing code enforcement until replacement housing is constructed for the present residents of substandard, unhealthy, dangerous dwellings. Meanwhile some 50,000 people are trapped in such housing.

50. Although the Town's and County's black populations have increased in the last decade, they have increased only in those areas which already had large concentrations of black people. As a result of this "vertical increase" or racial impacting, in the Town of Hempstead, for example, Lakeview is 82.2% black; Roosevelt 67.5%; Hempstead Village, 35.8%; and Inwood, 23.8%. Although it is in these areas of black concentration that the worst housing conditions are found, much indecent, inadequate housing exists in poverty areas of white persons as well.

D. Housing Needs

51. Various groups of housing consumers have been affected in different, although equally undesirable and unlawful, ways by the lack of adequate housing at reasonable rates and sales prices.

52. As described heretofore, families unable to afford to purchase and maintain single family residences on their own incomes have doubled up with other families to share expenses. Thus they have gained shelter; however, they have frequently done so not only by sacrificing privacy, but also by subjecting themselves and their children to unhealthful over-crowding.

53. Hundreds of recipients of public assistance have had to accept motel rooms in lieu of the apartments and houses which simply do not exist. Accomodations are neither luxurious nor enviable. Lacking refrigerators and cooking facilities, mothers have no place to store milk for small children and are unable to feed older children breakfast before sending them off to school. Lacking cars and not served by public transportation, families are completely isolated and are dependent on the closest restaurant, in many cases closed certain days of the week, for their meals, whatever the food might be. There are no play areas for children, who must be watched constantly since motels are invariably on main highways. Motel accomodations are frequently over-crowded with

whole families crammed into one small room. The number of welfare recipients in motels has recently been reduced, not because housing at low rents has become available, but rather because the Department of Social Services, in desperation, has agreed to pay higher rents.

54. Approximately 65% of the persons on public assistance in the County are eligible for public housing and the remainder would qualify for subsidized housing, yet, as more fully described hereafter, the County and the Town have steadfastly refused to permit more than a token amount of such housing to be constructed.

55. The relative number of persons aged 20 to 24 in Nassau County has sharply and unexpectedly declined. Experts agree that the lack of suitable housing accomodations has resulted in this age group's forced out-migration from the County, leaving the County with a dearth of the life blood that will one day be so important to the County's sustenance.

56. Meanwhile, physically less mobile and psychologically more rooted, the elderly have continued to increase. Partially as a result of medical advances, 1600 more persons over the age of 65 now live in the County than experts had predicted. Unable to find apartments, much less apartments which they can afford, thousands of elderly persons are trapped in homes which are too large for their needs and both too expensive and too exhausting to maintain. At least 4,000 persons over the age of 65 have been found eligible for subsidized senior citizen housing in the Town alone; however, the units to house them neither exist nor are planned.

57. Aggravating an already critical housing situation is the pressure being generated by workers whose jobs are moving to Long Island. In the period 1960-65, jobs increased four times faster than population in Nassau County. In June 1970, there were 748,000 jobs in the County; by 1985, there are expected to be 1,200,000. Most of these new jobs have been and will continue to be blue collar and non-professional; thus the new workers swell the ranks of those already unsuccessfully seeking moderately priced housing. Inevitably, as developed, Mitchel Field itself will generate

[new jobs, attracting new workers to the County while failing to provide housing opportunities for the workers. All such people who work or will work in the County or Town but cannot live there will be forced to endure the financial drain, impairment to physical, mental and emotional health, and disruption of personal and domestic life necessitated by commutation.

58. The Nassau-Suffolk Regional Planning Board (hereinafter the "RPB")in 1968 culminated a 5-year planning study, at a cost of over $1,000,000 in Federal and County money, by projecting that Nassau would need between 100,000 and 105,000 new housing units by 1985. Recognizing that certain groups, particularly young married couples and the elderly, preferred multi-family units to single family detached residences and knowing that multi-family units can most readily serve the needs of low and moderate income persons since they can be produced less expensively than single family units, the RPB projected that the County would require 62,500 apartment units by 1985, or twice the number it had in 1968. The RPB believed that 42,500 of the units would be needed in the Town.

59. The RPB also concluded that the County needed 23,500 public and publicly assisted housing units as of the time of its study in 1968 in addition to the 2,000 such units then in existence or under construction. The RPB concluded that two-thirds of those units were needed in the Town, which at that time had only 850 units of low and middle income housing.

60. Since 1968 the Town and County have done almost nothing to meet these carefully documented needs. Only 4,210 apartment units were constructed in the County in the three years following the study. These units represent about one-third the number which should have been constructed if Nassau's 1985 goal is to be reached. Worse, only 1,200 new units of publicly assisted housing have been constructed despite the fact that three years ago 23,500 units of such housing were needed at once.

61. The Town, which had originally planned to construct or permit the construction of 1500 units for the elderly on Mitchel Field, pared the number down to 250 units and, as fully described here-]

after, has recently abandoned the project entirely rather than agree to balance the units for the elderly with units for low income families in the Town, as required by the federal government.

62. The Town has previously abandoned a modest plan to construct some 700 units of publicly assisted housing on sites scattered throughout the Town. Thus, as of August 1971 the Town had only 1,254 units of publicly assisted housing of which 394 were for families and 860 were for the elderly. Upon information and belief, only a small number of additional units have been constructed since then.

63. Meanwhile the County, with the enthusiastic backing of the Town, has announced that no housing will be constructed on Mitchel Field.

E. Vacant Land

64. The County's refusal to plan for housing on Mitchel Field makes it all but impossible to meet Nassau's critical housing needs because the 500-600 acres of Mitchel Field now awaiting development represent the largest and most significant tract of vacant developable land in the County. The several thousand other acres of vacant, developable land in the County are in relatively scattered sites and are almost all privately owned.

65. Because Mitchel Field is County-owned, it offers a unique opportunity to provide an imaginative solution to at least some of the County's housing problems in conjunction with development of commercial, civic and cultural uses which will make Mitchel Field a true Center for the County.

66. Throughout the Town of Hempstead only about 330 acres are zoned for multi-family development. Most of that is located in the Village of Hempstead outside the reach of Town and County development and some is also confined to two-family units. This present zoning in the Town will restrict the amount of multi-family housing which can be built there to less than one-third of the 42,500 multi-family units needed by 1985. Obviously, the Town cannot meet that need unless a substantial portion of the requisite units are built on Mitchel Field.

IX. THE POWER AND AUTHORITY OF NASSAU COUNTY TO DEVELOP HOUSING ON MITCHEL FIELD

67. Through the various powers given it by the law of the State of New York, the County has complete power and authority to develop housing on Mitchel Field to meet the desperate need for housing in the Town and County as described elsewhere in this complaint. Such power and authority includes, but is not limited to:

(a) The lease, transfer or sale of County real property to a private person for any lawful purpose--such lawful purpose of course includes the development of housing;

(b) The lease, transfer or sale to or exchange with any municipal corporation of the State of County real property for any lawful purpose--the County thereby could convey Mitchel Field or a part thereof to the Town of Hempstead for development of public housing thereon by the Hempstead Housing Authority;

(c) The lease, transfer or sale to or exchange with the State itself of County real property for any lawful purpose--the County thereby could convey Mitchel Field or a part thereof to the Urban Development Corporation of the State for development of housing thereon; and

(d) The determination by the County that use of Mitchel Field land for housing is a public purpose and the conveyance of such land to an appropriate party for development in accordance with such determination.

68. Mitchel Field is real property owned by the County and is therefore subject to the exercise of said power and authority. The exercise of said power and authority is the responsibility of defendants Board of Supervisors and the individual members thereof and of defendant County Executive Caso.

69. Through the exercise of the power and authority described above, the County is in the process of developing a part of Mitchel Field for a 500 room hotel which, upon information and belief, will rent lodgings at prices low and moderate income-

persons generally cannot afford. For the County to exercise its foregoing power and authority to develop 500 units of transient housing for middle and upper-income persons while failing and refusing to develop permanent housing to meet the needs of the citizens of the County, Town and Region is typical of the County's wasting of Mitchel Field.

X. REFUSAL OF THE COUNTY AND THE TOWN TO PROVIDE HOUSING ON MITCHEL FIELD

70. The County refuses to meet the critical need for housing in the County and Town by developing housing on Mitchel Field. Defendant Caso summed up his position in November 1970 when, as County Executive-elect, he said: "Any housing aspects (at Mitchel Field) are out. They will never be considered. Housing is completely out." He and the County have acted consistent with that viewpoint ever since by, e.g., (a) rejecting a proposal to construct 1000 units of housing for veterans on the Field; (b) negotiating a new $100,000 contract with Liu Urban Design Associates (hereinafter "Liu") for further planning of Mitchel Field on the condition that Liu is to propose no housing; and (c) refusing to release the County-commissioned March 1971 Liu site plan for the Field because it provided for housing.

71. The Town and its Presiding Supervisor, defendant Purcell, are equally adamant in their opposition to low-income housing on Mitchel Field. Defendant Purcell, who is also a member of the County Board of Supervisors, recently said "If anybody thinks he's going to sell low-income housing in this town, he'd better find another tune to dance to."

72. The refusal by the County and Town to provide housing on Mitchel Field flies in the face of all those groups, partisan and non-partisan, expert and non-expert, which have had to do with the development of Mitchel Field during the last 10 years.

73. Even before the County purchased Mitchel Field, the aforesaid Moses committee, appointed by then County Executive Holly Paterson, proposed that at least 44 acres of the Field be devoted to residential uses. Soon thereafter, the prestigious Regional Plan Association (hereinafter "RPA") called for the development of Mitchel Field as Nassau's center. It advocated--and still advocates--that the area be devoted to the high density uses

befitting a center, including a significant amount of housing. The RPA recently expressed shock at learning Liu had agreed to plan the design of Mitchel Field without housing, noting that a "center without housing isn't a metropolitan center."

74. The Nassau-Suffolk Regional Planning Board supports RPA's position that Mitchel Field be developed as a hub for Nassau County. Implicit in the hub concept is use of the land for housing and the creation of a "24-hour center".

75. In 1966 Marcom, hired to prepare a plan for Mitchel Field by the Mitchel Field Development Corporation, a corporation created by the County and since dissolved by the County, proposed that 10,000 units of housing for all income groups be constructed on the Field. This is a proposal which the Nassau County Planning Commission supported in October 1966, and which it supported again in December 1971 when it adopted the Nassau County Comprehensive Plan. In that Plan the Commission called for 204 acres of Mitchel Field to be used for housing. The defendant County Executive and defendant Board of Supervisors have rejected the Plan.

76. Yet, even Liu, soon to be rehired by Nassau, as aforesaid, has proposed housing for the Field, saying in an earlier study: "From a planning point of view housing is considered one of the necessary land uses at Nassau Center (Mitchel Field) if a balanced and truly vital center is to be achieved."

77. It is clear that the County has not been devoted to the goal of constructing housing on Mitchel Field at any time during the last 10 years.

78. Were it otherwise, the County Planning Commission would not have had to make the same housing proposals last December that it had made six years before.

79. The Town, which has the power to zone Mitchel Field, has zoned most of the Field for industry or as an edu-cultural zone, a zone especially created for public, philanthropic and charitable uses. In many areas, the Mitchel Field land had previously been zoned to permit residential uses. In August 1971, the Town carved

a tiny parcel of land out of the edu-cultural zone and created the Mitchel Field Hotel District. The relevant zoning amendment makes it very clear that the rezoned land is to be used as a transient hotel and for no other purpose. The zoning amendment defines "transient hotel", lest there be any doubt, to mean that its accomodations are only to be "rented on a daily basis". The August 1971 rezoning illustrates the great care the Town has taken to make sure that no housing "sneaks" on to Mitchel Field.

80. Further, the singling out of a small tract of land, the rezoning of which will financially benefit the hotel developer and owner, is an arbitrary and capricious act on the part of the Town. It is an act which the lack of a comprehensive plan for Mitchel Field not only makes possible but encourages. It is an act which the Nassau County Planning Commission formally opposed on the ground that it was wrong to approve a hotel when there was no overall plan of development for the Field.

81. In a similar arbitrary and capricious rezoning of Mitchel Field in October 1971, the Town, with the County's approval, rezoned 50 acres for commercial use. At one time the land in question had been intended as a site for housing for the elderly and a school for the handicapped. Again, the rezoning will enrich the developer of the commercial property. Again, it is the absence of a comprehensive plan which makes possible such capricious rezoning and rejection of housing.

82. The attitudes of the Town and County toward housing at Mitchel Field are well illustrated by the history of senior citizen housing there. Both the Town and County say they are willing to consider the construction of such housing on the Field; however they will accept only a token number of units. In the face of an unpredicted upsurge in the number of people over the age of 65 in the Town and County and a waiting list of at least 4,000 persons qualified for subsidized housing for the elderly in the Town, the Town and County have whittled the number of proposed units down from 1,500 to a miserly 250.

83. Now, even those 250 units are eliminated because the Town refuses to abide by an agreement with HUD, which it entered into in 1970, by which the Town agreed to let HUD construct 250 units of housing for low-income families if HUD would subsidize 750 units of housing for the elderly. All 1000 units were to be built on Mitchel Field. The agreement was a reversal of HUD's usual policy which requires 2 low-income units for each unit for the elderly. After the 750 units for the elderly were built--but apparently not on Mitchel Field--the Town breached its agreement by demanding that the 250 units of low-income housing also be earmarked for senior citizen use, even though that 250 units would not begin to meet the desperate need in the Town and County for low-income housing and would leave the Town with a meager total of 394 units of low-income housing (as well as only 860 units for the elderly).

84. That the Town is discriminating against the poor and the black, against families with children and against all those who seek permanent housing is also made clear by the fact that the Town has never opposed the 14-story dormitories at Hofstra University. The University is located both on land which was formerly part of Mitchel Field and on land which is adjacent to the Field.

85. The refusal of the County and Town to provide a significant amount of housing for persons of low and moderate income on the Field inflicts an ever-increasing injury to the plaintiffs because, as heretofore described, the housing crisis in the County and Town has been steadily intensifying. It is as though the County and Town were intentionally trying to torment plaintiffs, cutting plans for housing on Mitchel Field and announcing that there will be no housing on this, the largest and most significant tract of vacant land in the County, while the vacancy rate drops to zero and the inadequate housing in which plaintiffs are trapped continues to deteriorate.

XI. REFUSAL OF NASSAU COUNTY TO COMPPEHENSIVELY PLAN MITCHEL FIELD

86. Since 1961 the County has funded a number of groups to comprehensively plan Mitchel Field but has never adopted any proposed plan. Now that the County has spent at least $700,000 in tax revenues to plan Mitchel Field, defendant County Executive Caso maintains that no comprehensive plan is necessary and that he will be bound by none.

87. Every group or institution which has been involved with the development of Mitchel Field insists that a comprehensive plan is essential if its full development potential is to be realized and if its development is to promote the public welfare.

88. Even before the Federal Government sold Mitchel Field to the County, it called on the County to prepare a coordinated, comprehensive plan for its development. The government feared that absent such a plan, local haggling and an irresolute County might impede sound development of the land. The Federal Government's fears were justified.

89. Three County Executives and Boards of Supervisors have appointed or hired at least seven different groups to plan Mitchel Field during the last ten years. Each time the County has either rejected outright the plan presented to it or has simply ignored its proposals.

90. Meanwhile the County has embarked on a piece-meal disposition of tracts of Mitchel Field, halting all development at the Field in 1968 except for the Coliseum; voting to sell a token 10.5 acres in 1970 for obviously limited housing development which was later abandoned under local pressure; deciding or considering at various times to use various areas for everything from Little League Baseball fields to a vocational and technical high school to county offices to a children's zoo and botanical garden to a bus depot, without any concern for how the various uses interrelate; inviting then President Johnson to turn the first spade of earth in 1964 for the John F. Kennedy Cultural Center which,

in 1972, has become the Veterans' Memorial Coliseum.

91. The County's own planners have lamented the lack of a comprehensive plan for Mitchel Field. In December 1971 the Nassau County Planning Commission called on the County to adopt a master plan for Mitchel Field. Writing in October 1968, Marcom, Inc., the County's own planning consultant, noted that construction of the Coliseum was well under way, lamented that land uses were being determined "without the kind of comprehensive perspective that is desirable" and commented that "without comprehensive planning for the use of the remaining parts of the Field, valuable opportunities may be lost."

92. Defendants have lost valuable opportunities, and in wasting Mitchel Field they have wasted plaintiffs' tax money. The defendant County has not only used tax money to buy plans it has subsequently rejected, for ten years it has also failed to develop land, which it purchased with tax revenues, in a way which would generate new tax revenues. In addition, the County has continued to maintain high tax rates by refusing to construct low and moderate income housing on Mitchel Field. Were such housing constructed, plaintiffs' taxes would not have to be used to pay motel rentals and high market rentals for housing recipients of public assistance. Were such housing constructed the County would not be using tax money to perpetuate racial and economic segregation.

93. Recognizing the importance of a comprehensive plan for Mitchel Field, local and community groups have called for such a plan. In particular the Mitchel Field Task Force of the Long Island Association, representing 1000 of the Island's leading business firms, issued a report in March 1970 which first documented the injuries suffered by the County for lack of such plan and then indicated the benefits the County could expect from a comprehensive plan.

94. If the Field were comprehensively planned it could serve as a focal point, or center, for the County and give it the sense of identity it now lacks. In addition to furnishing a site for modern new office buildings and apartments and the opportunity to put exciting new architectural techniques into practice, the mass

transit serving Mitchel Field might be the first step and impetus for a mass transit system serving all Long Island.

95. In the absence of comprehensive planning, no rational overview of developmental needs exists; no developmental priorities have been established; no determination of the effect of development on ecological, transportation and other problems has been made. Instead, Mitchel Field is being frittered away by odd bits and pieces of usage, some clearly worthwhile (though not necessarily of top priority), some clearly of no priority whatever. An example of the latter is the Hempstead Bank which has put up a 3-story building on part of Mitchel Field pursuant to a 99-year lease with the County.

96. Despite the compelling need and virtually universal support for the development of Mitchel Field in accordance with a comprehensive plan, defendants Nassau County, County Board of Supervisors, County Executive Caso, Town of Hempstead, and Town Board have steadfastly failed and refused, willfully and with knowlege of the consequences, to comprehensively plan the use of Mitchel Field. In particular, County Executive Caso has, in several instances, unilaterally acted or refused to act in this manner.

97. County Executive Caso's refusal to plan Mitchel Field allows him to propose different uses for it every year. For instance, last year in his State of the County Message, Caso spoke of a library and a rehabilitation center for drug addicts. This year it is state and county schools for the mentally retarded, and, because their use has not been determined yet anyway, 80 acres to be "swapped" with the federal government. Such fickleness will continue unabated and unreasoning without a comprehensive plan.

XII. THE ROLE OF THE ENVIRONMENTAL PROTECTION AGENCY

98. The EPA was established in 1970 by the President of the United States with the approval of Congress as part of Reorganization Plan Number 3 of 1970 pursuant to 5 U.S.C. § 901. The EPA took over the functions, among others, of the Department of the Interior relating to the Federal Water Pollution Control Act and of the Department of Health Education and Welfare (hereinafter "HEW") relating to the responsibilities of HEW's Bureaus of Solid Waste Management and Water Hygiene.

99. The Federal Water Pollution Control Act, 33 U.S.C. §§ 1151 et seq., provides for, among other things, federal grants to local governments for the construction of sewerage lines and treatment plants in accordance with comprehensive development programs. The sewerage projects undertaken in accordance with the comprehensive development programs must be in the public interest and show a "public necessity" and a "public benefit" derived from the project.

100. Acting pursuant to the Federal Water Pollution Control Act, the EPA has committed itself to pay to Nassau County $90,000,000 or 60% of the cost of the first phase of a project that will eventually hook up the homes of 560,000 County residents to sewers. Upon information and belief, such homes are predominantly of white middle and upper-income persons living in communities which discriminate in housing against minority oppressed persons. The EPA has also approved a grant of $46,050 to the County for planning for the second phase of the project. This planning grant was made pursuant to either the aforementioned Act or to the authority derived from HEW's Bureaus of Solid Waste Management and Water Hygiene.

101. The EPA, in making such payments to the County, is subject to the Intergovernmental Cooperation Act, 42 U.S.C. § 4231, by the terms of Circular A-95, revised Feb. 9, 1971, of the Office of Management and Budget. Said Act requires, among other things, that:

(a) Federal aid shall be "consistent with and further the objectives of state, regional and local comprehensive planning" including long-range planning of the pattern and intensity of land use;

(b) Federal aid shall seek to further appropriate land use for housing;

(c) In providing federal aid, consideration shall be given to all developmental aspects of the total community, including housing, transportation, economic development, natural and human resources development, community facilities and the general improvement of living environments; and

(d) Planning required by individual federal programs (e.g., the EPA's sewerage grants) shall be coordinated with and made part of "comprehensive local and areawide development planning".

102. In view of the County's: refusal to apply existing regional and local comprehensive planning to Mitchel Field, refusal to comprehensively plan Mitchel Field at all, and refusal to utilize any of the Mitchel Field land for housing, the EPA's financial commitments to the County are in violation of the Intergovernmental Cooperation Act.

103. Moreover, because the EPA's financial commitments to the County will perpetuate and reinforce existing patterns of racial and economic discrimination in housing and employment, especially in view of the County's wasting of Mitchel Field, such commitments are in violation of federal constitutional and statutory provisions as cited hereinafter.

XIII. THE ROLE OF THE GENERAL SERVICES ADMINISTRATION

103. By virtue of the Public Buildings Act of 1959, as amended; the Federal Property and Administrative Services Act of 1949, as amended; and Reorganization Plan No. 18 of 1950, the GSA has the authority and responsibility to plan, develop and construct United States Government-owned public buildings to house Federal agencies, and to acquire leased space for federal agency use. GSA also has the authority and responsibility to dispose of surplus federal property.

104. When GSA sold to the County that part of Mitchel Field which was surplus property available for sale, it retained some 50 acres for future Federal use. GSA now is undertaking to construct a 700,000 square foot, $74,000,000 federal office building on Mitchel Field. In that building GSA intends to house federal court rooms and the regional offices of the Departments of Housing and Urban Development; Health, Education and Welfare; Interior; Labor; Treasury; and Transportation.

105. Such an office building will employ a large number of low and moderate-income persons, yet no housing for such workers is available on Mitchel Field, in the Town, or in the County nor will be available, given the County's wasting of Mitchel Field. Moreover, absent a comprehensive plan for the development of Mitchel Field, there will be no adequate transportation facilities to service the federal office building.

106. By placing a federal office building on Mitchel Field, in the face of the County's wasting of Mitchel Field, GSA has violated:

(a) Its June 1971 Memorandum of Understanding with HUD. In that Memorandum GSA agreed to assure federal employees "the availability of low and moderate income housing without discrimination because of race, color, religion, or national origin";

(b) Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 et seq., because it has failed to affirmatively further the fair housing purposes of that Act, as it must

under law;

(c) Executive Order No. 11512, February 27, 1970, which requires GSA not only to consider the availability of adequate low and moderate income housing when it selects a site for a federal office building, but also requires GSA to consider whether there is adequate access to the site from other areas of the urban center and whether there is adequate parking.

Further, the GSA's commitment to erect an office building on Mitchel Field without requisite housing for the persons to be employed there will perpetuate and reenforce existing patterns of racial and economic discrimination in housing and so is in violation of federal constitutional and statutory provisions as cited hereinafter.

XIV. THE ROLE OF THE METROPOLITAN TRANSPORTATION AUTHORITY

107. The MTA is a body corporate and politic of the State of New York and constitutes a public benefit corporation. It has authority under New York Public Authorities Law § 1260 et seq. to develop and improve commuter transportation and related services and to develop and implement a unified mass transportation policy for the Metropolitan Commuter Transportation District which includes Nassau County.

108. Under §§ 1265, 1266 and 1267 of said Law, the MTA, in addition to having the power to be sued, has the power, among others, to acquire and hold real property, make plans and studies, apply for and receive financial assistance from governmental agencies, establish and construct and operate transportation systems, enter into contracts or other arrangements with any political subdivision (including a county or town) of the State, and "do all things necessary, convenient or desirable to carry out its purpose and for the exercise of the powers granted in this title".

109. Section 1266 of said Law provides that no municipality or political subdivision (including a county or town) of the State shall have jurisdiction over any facilities of the MTA or any of

its activities or operations.

110. The development of a significant amount of housing on Mitchel Field and the comprehensive planning of Mitchel Field necessitate the planning and implementation of mass transportation facilities. This has been made clear by the non-partisand and even partisan planning agencies which have studied and proposed comprehensive plans for Mitchel Field. To do otherwise, according to those proposals, would render ineffectual the development of Mitchel Field and make chaotic the already overburdened transportation system that now serves the County.

111. Such Planning and implementation of mass transportation facilities in connection with Mitchel Field cannot be carried out without active participation of the MTA. Heretofore the MTA has played no or virtually no part in the planning and development of Mitchel Field, partly because the County and Town have failed and refused to invite the MTA's participation and partly as a result of the MTA's failure to initiate such participation. Moreover, the MTA is presently engaged in its own transportation planning for the region and in its own commitment of financial and other resources without regard to the development of Mitchel Field. Hence, the MTA's participation in the planning and development of Mitchel Field pursuant to order of this Court is essential.

XV. THE DENIAL OF FEDERAL BENEFITS

112. The contributions of the EPA and GSA, as aforesaid, are typical of millions of dollars received by the Town and County from many agencies of the United States Government. Such federal moneys are given to the Town and County without any requirement that the Town and County meet the housing needs of minority oppressed persons, thereby denying to such persons the benefit of participation in those various programs of the Town and County which receive such federal financial assistance. Moreover, such denial and exclusion amount to a subjection of such minority oppressed persons to discrimination.

XVI. DISPARATE RACIAL EFFECT

113. The County's wasting of Mitchel Field and, in particular, the failure and refusal to develop a significant amount of low and moderate-income housing there as well as the resultant denial of full tax value and dilution of services, have a disparate adverse effect upon black and Spanish-speaking people because a far greater proportion of such people, as a class, are economically disadvantaged and so cannot obtain housing in the County and Town and cannot bear the monetary injury. For example:

(a) Only one in every 10 white persons is poor whereas one in every 3 black persons is poor;

(b) Only 5.5% of all families in Nassau County earn $3,000 or less whereas 21% of black and Spanish-speaking people in Nassau County earn $3,000 or less;

(c) Blacks average only 61% the income of whites. Spanish-speaking men earn 76% the income that white men earn. The average annual income of a white family in the United States is $10,240 while that of a black family is $6,280 and that of a Spanish-speaking family is $7,330.

(d) Blacks, though comprising only 11% of the United States population, represent 18% of the residents of our cities and 41% of the central city poor--the figures for New York City are somewhat higher.

114. Thus the economic discrimination which is the immediate consequence of the County's wasting of Mitchel Field is, in effect, discrimination on the basis of race and national origin. Therefore the injuries, described hereinafter, that result from such wasting cause disproportionately greater harm to black and Spanish-speaking persons than to white persons although such injuries also obviously fall upon persons of low and moderate income, taxpayers, veterans, the elderly, blue-collar workers, young married couples, students, families with children, public service employees and business and financial interests regardless of race or national origin.

XVII. INJURIES TO PLAINTIFFS

115. As a direct and proximate result of the County's wasting of Mitchel Field, including those acts of omission and commission by the various defendants of the County, Town, State and United States Governments, as aforesaid, plaintiffs have suffered and are continuing to suffer the injuries described in paragraphs 116 through 139 hereof.

A. Housing-Class Injuries

116. The injuries to housing-class plaintiffs that are hereinafter set forth are suffered by virtue of the fact that such plaintiffs are black or Spanish-speaking and/or of low or moderate income. Such injuries are also more often suffered by plaintiffs of particular status, such as veterans, blue-collar workers, the elderly, public service employees, college students, families with two or more children who want or need apartments, and young married couples who, regardless of their race or national origin, are most likely to lack the financial wherewithal to obtain the housing presently available in Nassau County and the Town of Hempstead.

117. Housing-class plaintiffs who presently live in the Town and/or County are denied the opportunity for decent housing alternatives at a cost they can afford. They are thereby forced to suffer from their present indecent and/or inadequate housing, often in an unhealthy, oppressive environment and are thereby denied the same opportunity to enjoy dignified, decent, adequate housing in a healthy, enriching environment as the middle and upper-income residents, usually white, of the Town and/or the County. Such housing problems include forced illegal occupancy.

118. Housing-class plaintiffs who presently live outside the Town and/or County are excluded from living there, thereby being forced to suffer from their present indecent, inadequate housing in an unhealthy, oppressive environment and thereby being denied the same opportunity to enjoy dignified, decent, adequate housing in a healthy, enriching environment as the middle and

upper-income residents, usually white, of the Town and/or County.

119. Housing-class plaintiffs are denied the opportunity for good physical, mental and emotional health, a decent environment and the other positive factors necessary for sustenance of an acceptable quality of life which is available to the middle and upper-income residents, usually white, of the Town and/or County.

120. The black and Spanish-speaking housing-class plaintiffs of school age are forced to attend segregated schools of inferior educational quality. They are thereby denied the right to a high quality education such as is available to the children of the middle and upper-income residents, usually white, of the Town and/or County, a high-quality education that would also be integrated were such plaintiffs able to live in the Town and County.

121. The housing-class plaintiffs' mobility and right to travel, including their right to move to, to move within and to live in the Town and County is denied or at least seriously interfered with.

122. Among the housing-class plaintiffs are persons of all races who work in Mitchel Field, the Town and/or County but are denied the opportunity to live there. Those persons must either give up their jobs or else endure the burden of the inordinate time, expense, strain on health and disruption of their personal and domestic lives caused by commuting to work. Such loss of job or burden is not imposed upon the middle and upper-income residents, usually white, of the Town and/or County nor upon the white middle and upper-income residents who work and live in the communities from which such plaintiffs come.

123. Among the housing-class plaintiffs are persons of all races who do not presently work in Mitchel Field, the Town and/or County but who could work there and would like the opportunity to do so. However, such persons do not have access to jobs at those locations because there is no decent housing for them at a cost they can afford in such places. Such plaintiffs are thereby denied the same opportunity for employment as is available to the

middle and upper-income residents, usually white, of the Town and/or County.

124. Housing-class plaintiffs are frequently required to live in isolation, segregated from middle and upper-income persons, usually white. Such middle and upper-income persons who reside in the Town and/or County are in turn denied the opportunity for a racially and economically integrated life.

125. The discriminatory and oppressive conditions in the municipalities in which the housing-class plaintiffs live are perpetuated and worsened by the County's wasting of Mitchel Field.

126. Housing-class plaintiffs are denied the right to make and enforce contracts for the purchase or rental of housing and are denied the benefit of all laws and proceedings for the obtaining and securing of real property, rights enjoyed by the middle and upper-income residents, usually white, of the Town and/or County.

127. Housing-class plaintiffs are denied the right to inherit, purchase, lease, sell, hold and convey real property, rights enjoyed by the middle and upper-income residents, usually white, of the Town and/or County.

128. Housing-class plaintiffs have been discriminated against in the terms, conditions and privileges of the sale and rental of dwellings and in the provision of services and facilities in connection therewith.

129. To a very substantial and very real extent, middle-income persons also suffer from the foregoing housing-class injuries because of the shortage of housing for such persons in the Town and County.

B. Taxpayer-Class Injuries

130. Taxpayer-class plaintiffs include, but are not limited to, housing-class plaintiffs. Those housing-class plaintiffs who are also taxpayer-class plaintiffs have had their Town, County, State and Federal tax moneys used to discriminate against them, as aforesaid.

131. Taxpayer-class plaintiffs who are not housing-class plaintiffs have nevertheless had their Town, County, State and Federal

tax moneys used to discriminate against others, as aforesaid.

132. Taxpayer-class plaintiffs have been subjected to gross abuses of the power and authority of the legislative branches of the Town and County governments which have dealt with Mitchel Field in a consistently irresponsible, arbitrary and capricious manner.

133. Taxpayer-class plaintiffs have been subjected to a substantial waste of their County tax moneys by virtue of the County's spending of hundreds of thousands of dollars for the study and preparation of several comprehensive plans for the development of Mitchel Field, all of which it has failed and refused to implement.

134. Taxpayer-class plaintiffs have been subjected to a substantial waste of their Town tax moneys by virtue of the Town's failure and refusal to rezone Mitchel Field land to meet existing housing needs and to enable a comprehensively planned used of such land, thereby necessitating the expenditure of hundreds of thousands of dollars for unnecessary services to deal with the resultant problems of inadequate housing, transportaion, administration, law enforcement and the like.

135. Taxpayer-class plaintiffs have been subjected to a substantial waste of their County tax moneys by virtue of the County's failure and refusal to develop Mitchel Field so as to meet existing housing needs, thereby necessitating the expenditure of millions of dollars for payment of motel bills for families on public assistance.

136. Taxpayer-class plaintiffs have suffered economic deprivation by virtue of the County's failure and refusal to develop Mitchel Field in accordance with a comprehensive plan which would result in millions of dollars of revenue to the County and perhaps the Town, thereby relieving the Town and County tax burden as well as the State and Federal tax burden inasmuch as certain State and Federal subsidizations to the Town and County would no longer be necessary.

137. Taxpayer-class plaintiffs have been subjected to the unjust enrichment, at taxpayer expense, of businesses which stand to

profit from the County's ad hoc, unplanned, capricious, wasteful and irresponsible "development" of Mitchel Field. Such businesses are those which win contracts to build on or use Mitchel Field land which, if comprehensively planned, would result in other uses.

C. Injuries to Both Classes

138. Housing-class and taxpayer-class plaintiffs all suffer from the County's failure and refusal to develop Mitchel Field in accordance with a comprehensive plan because, without a comprehensive plan, no intelligent assessment can be made of the social, cultural, economic, environmental, recreational and other relevant needs of the County, Town and region and the ways in which Mitchel Field can best help to meet those needs. Thus potential injury in many significant areas of life and of a permanent nature may result.

139. All plaintiffs who are black or Spanish-speaking suffer from their exclusion from participation in, denial of the benefits of and subjection to discrimination under all those programs and activities of the Town and County which receive federal financial assistance, such assistance being given notwithstanding the discrimination against such plaintiffs as is set forth herein.

D. In General

140. Plaintiffs are irreparably injured by defendants' acts as aforesaid and said injuries will continue unless and until this Court declares defendants' acts complained of unlawful and enjoins defendants as hereinafter set forth. Plaintiffs have no adequate remedy at law.

141. There exists between plaintiffs and defendants an actual controversy regarding the validity of the County's wasting of Mitchel Field under the constitutional and statutory provisions of the United States which are cited in paragraph 6 hereof. That controversy requires that this Court declare such wasting to be unlawful, enjoin its continuance by defendants and compel defendants to take affirmative action to rectify the wrongs done and being done to plaintiffs.

XII. CLAIMS FOR RELIEF

142. All plaintiffs re-aver paragraphs 1 through 141 of this complaint as if fully set forth herein and rely upon such paragraphs for the claims for relief hereinafter set forth.

143. For a first claim for relief, defendants have discriminated and are discriminating against certain plaintiffs on the basis of their race and national origin as black people and Spanish-speaking people, in violation of said plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, and under Federal law as set forth in 42 U.S.C. §§ 1981, 1982, 1983 and 3604.

144. For a second claim for relief, defendants have discriminated and are discriminating against most plaintiffs on the basis of their economically disadvantaged status as persons of low and moderate income, in violation of said plaintiffs' rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

145. For a third claim for relief, defendants have discriminated and are discriminating against various plaintiffs on the basis of their economically disadvantaged respective statuses as blue-collar workers, veterans, the elderly, public service employees, college students, families with children and young married couples, in violation of said plaintiffs' rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

146. For a fourth claim for relief, defendants' wasting of Mitchel Field, as aforesaid, is arbitrary, capricious and unreasonable, having no substantial relation to the health, safety, morals or general welfare of the residents of the defendant County and Town or of the region in whcih the County and Town are situated, and is contrary to the public interest, in violation of plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

147. For a fifth claim for relief, the County, Town and State defendants have violated plaintiffs' rights as taxpayers under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, and the federal defendants have violated plaintiffs' rights as taxpayers under Article I, Section 8 of Constitution of the United States.

148. For a sixth claim for relief, defendants have confined and restricted and are confining and restricting certain plaintiffs in what amounts to involuntary servitude and the vestiges thereof, in violation of said plaintiffs' rights under the Thirteenth Amendment to the Constitution of the United States.

149. For a seventh claim for relief, defendants have denied and are denying to certain plaintiffs the right to associate, if said plaintiffs so choose, with white persons of middle and upper-income and to use and enjoy the environment and community life of such persons, in violation of said plaintiffs' rights under the First Amendment to the Constitution of the United States.

150. For an eighth claim for relief, defendants have abridged and are abridging plaintiffs' privileges and immunities under the Fourteenth Amendment to the Constitution of the United States.

151. For a ninth claim for relief, defendants have denied and are denying to plaintiffs their rights to mobility and to travel, enter and abide in violation of plaintiffs' rights under the Constitution of the United States.

152. For a tenth claim for relief, defendant EPA has violated plaintiffs' rights under 42 U.S.C. §§ 3608 and 4231.

153. For an eleventh claim for relief, defendant GSA has violated plaintiffs' rights under 42 U.S.C. §§ 3608 and 4231, the June 1971 Memorandum of Understanding with HUD, and Executive Order No. 11512.

154. For a twelfth claim for relief, defendants have violated plaintiffs' rights under 42 U.S.C. 2000d.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand that this Court:

A. Assign this case for hearing at the earliest practicable date and cause the case to be expedited in every way.

B. Declare: (1) the County's and Town's failure and refusal to develop a significant amount of housing, including low and moderate-income housing, on Mitchel Field; (2) the County's failure and refusal to comprehensively plan the development of Mitchel Field; (3) the County's and Town's ad hoc, spot development of Mitchel Field; (4) the County's and Town's other acts of commission and omission in the wasting of Mitchel Field; and (5) the contributions of the EPA and GSA to the foregoing to be unlawful in that they violate plaintiffs' rights, privileges and immunities under:

(1) The Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States;

(2) The Due Process Clause of the Fourteenth Amendment to the Constitution of the United States;

(3) The Thirteenth Amendment to the Constitution of the United States;

(4) The First Amendment to the Constitution of the United States;

(5) 42 U.S.C. §§ 1981, 1982 and 1983; and

(6) 42 U.S.C. §§ 2000d and 3604.

C. Declare the acts of the EPA as described herein to be unlawful in that they also violate plaintiffs' rights, privileges and immunities under 42 U.S.C. §§ 3608 and 4231.

D. Declare the acts of the GSA as described herein to be unlawful in that they also violate plaintiffs' rights, privileges and immunities under 42 U.S.C. §§ 3608 and 4231, the June 1971 Memorandum of Understanding with HUD, and Executive Order No. 11512.

E. Preliminarily and permanently enjoin defendants from further wasting of Mitchel Field, as follows:

(1) Enjoin the County defendants from further development of Mitchel Field, including but not limited to: (a) the entering into of agreements; (b) the lease, sale, transfer or exchange of land; (c) the commitment of any part of the land to a particular purpose; (d) the authorization of construction, site planning or design; (e) the payment to or receipt of any money from a builder or developer or potential user of land; and/or (f) the doing of any other act which would lead to such further development;

(2) Enjoin the Town defendants from cooperating with or contributing to the further development of Mitchel Field, including but not limited to: (a) holding any hearing, acting upon or granting any application for a rezoning or variance relating to Mitchel Field land; (b) granting any permit for the construction of any new building or other structure; (c) issuing any certificate of occupancy; and/or (d) the doing of any other act which would lead to such further development;

(3) Enjoin the EPA from cooperating with or contributing to the further development of Mitchel Field or of any other part of the Town or County, including but not limited to: (a) the payment of any moneys, directly or indirectly, to the Town or County; (b) the commitment of any funds, directly or indirectly, to the Town or County; and/or (c) the doing of any other act which would lead to such further development; and

(4) Enjoin the GSA from cooperating with or contributing to the further development of Mitchel Field, including but not limited to: (a) the construction of any building or other structure on Mitchel Field land; (b) the entering into of any contract or subcontract for such construction; (c) the payment of any money with respect thereto; (d) the making of application to the County or Town or any other body for any

permit with respect to such construction; and/or (e) the doing of any other act which would lead to such further development;

until approval by this Court of a comprehensive plan pursuant to paragraph H hereof.

F. Order defendants to take the following actions:

(1) Order the County defendants to adopt, subject to paragraph H hereof, a comprehensive plan for the development of Mitchel Field, such plan to include a significant amount of housing for all income groups in direct proportion to their need;

(2) Order the Town defendants to rezone Mitchel Field land and promptly take whatever other steps are necessary in order to enable the uses proposed in said comprehensive plan to be accomplished;

(3) Order the County and Town defendants to promptly take whatever steps are necessary, following approval by this Court of said comprehensive plan, to implement the uses proposed in that plan;

(4) Order the County and Town defendants, and whomever accepts responsibility from them for development of the housing proposed in said comprehensive plan, to develop housing which is truly available to all persons regardless of race, national origin, ethnic background and economic status;

(5) Order the EPA to actively cooperate, within the extent of its authority, in the development of Mitchel Field in accordance with said comprehensive plan, including the granting of funds for water and sewerage facilities and for other costs as to which it has jurisdiction;

(6) Order the GSA to actively cooperate, within the extent of its jurisdiction, in the development of housing at Mitchel Field for the federal employees who will work at the Field and in the development of adequate access to said work

site by and parking for those federal employees who will work at but not reside at Mitchel Field; and

(7) Order the MTA to actively cooperate, within the extent of its jurisdiction, in the development of Mitchel Field in accordance with said comprehensive plan, including the study, planning, funding and construction of the transportation facilities necessary for implementation of the comprehensive plan.

G. Order defendants to permit and encourage meaningful participation of plaintiffs, their attorneys and urban planners retained by them in the drafting and consideration of said comprehensive plan.

H. Order defendants to submit said comprehensive plan to this Court, for this Court's approval, within 90 days from the date of entry of this Court's order herein.

I. Order defendants to submit quarterly reports to this Court as to the developmental status of Mitchel Field until such time as the Field is completely developed.

J. Order defendants to pay plaintiffs' reasonable attorney fees, costs and disbursements.

K. Retain jurisdiction of this action.

L. Grant such other and further relief as is appropriate.

March 7, 1972.

Respectfully submitted,

Denison Ray

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cAB:gmk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ABDON ACEVEDO; LOUIS DE GIACOMO; ADELE GRANT; JUDITH LUSTERMAN and DON-DAVID LUSTERMAN; ALICE PERLMAN and JULIUS PERLMAN; BETTY ANN REDFERN; RUBY WILLIAMS; BALDWIN COUNCIL FOR HUMAN RIGHTS; and LONG ISLAND REGION NAACP; on Behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

NASSAU COUNTY, NEW YORK, its officials, employees and agents; RALPH G. CASO, as County Executive of Nassau County; BOARD OF SUPERVISORS OF NASSAU COUNTY; JOHN W. BURKE, GEORGE B. COSTIGAN, ALFONSE D'AMATO, ANDRON DI PAOLA, FRANCIS T. PURCELL and MICHAEL TULLY, as members of the Board of Supervisors; TOWN OF HEMPSTEAD, NEW YORK, its officials, employees and agents; TOWN BOARD OF THE TOWN OF HEMPSTEAD; JAMES D. BENNETT, ALFONSE D'AMATO, ANTHONY C. IMBARIATO, LEO F. McGINITY, JOSEPH P. MUSCARELLA, GREGORY P. PETERSON, FRANCIS T. PURCELL and EUGENE WEISBRIN, as members of the Town Board; ENVIRONMENTAL PROTECTION AGENCY; WILLIAM D. RUCKELSHAUS as Administrator of the Environmental Protection Agency; GENERAL SERVICES ADMINISTRATION; ROD L. KRUGER, as Acting Administrator of the General Services Administration; METROPOLITAN TRANSPORTATION AUTHORITY; and WILLIAM J. RONAN, as Chairman of the Metropolitan Transportation Authority,

Defendants.

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Civil Action
File No.
72C 305

ANSWER

Defendants, NASSAU COUNTY, NEW YORK, its officials, employees and agents; RALPH G. CASO, as County Executive of Nassau County; BOARD OF SUPERVISORS OF NASSAU COUNTY; and JOHN W. BURKE, GEORGE B. COSTIGAN, ALFONSE D'AMATO, ANDREW DI PAOLA, FRANCIS T. PURCELL and MICHAEL TULLY, as members of the Board of Supervisors; appearing herein by their attorney, JOSEPH JASPAN, County Attorney of Nassau County, answering the complaint herein, allege as follows:

1. Upon information and belief, deny each and every allegation set forth in paragraphs 2, 3, 4 and all subdivisions thereunder, 6, 7, 8, 15(c), 27, 28, 29, 72, 80, 81, 84, 85, 86, 89, 90, 92, 94, 95, 96, 97, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153 and 154 of the complaint.

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 10, 11(a), 11(b), 12, 13, 14, 15(a), 15(b), 16(a), 16(b), 17(a), 17(b), 18(a), 18(b), 18(c), 18(d), 19(a), 19(b), 19(c), 78, 83 and 87 of the complaint.

3. Upon information and belief, deny each and every allegation of paragraph 1 of the complaint, except admit that portions of Mitchel Field are vacant and developable.

4. Upon information and belief, insofar as plaintiffs, in paragraphs 5 and 20 and 21 and all the subdivisions thereunder of the complaint, seek to allege any facts in support of their complaint, same are denied; and said defendants deny plaintiffs' standing to institute a class action or that the subject matter hereof is the proper subject of a class action.

5. Upon information and belief, insofar as plaintiffs in paragraph 9 of the complaint and all the subdivisions thereunder allege any facts in support of their complaint, same are denied.

6. Upon information and belief, deny each and every allegation in paragraph 22 of the complaint to the extent that portions of Mitchel Field are inalienable.

7. Upon information and belief, deny each and every allegation of paragraph 23 of the complaint, except admit that the Board of Supervisors is the legislative body of Nassau County and may act within the powers granted it by statute.

8. Upon information and belief, deny each and every allegation of paragraph 24 of the complaint, except admit that Ralph G. Caso is the County Executive of Nassau County and as such has powers granted by statute.

9. Upon information and belief, deny each and every allegation of paragraphs 25 and 26 of the complaint, except admit that the Town of Hempstead is a political subdivision of Nassau County and that James D. Bennett, Alfonse D'Amato, Anthony C. Imbarrato, Leo F. McGinity, Joseph P. Muscarella, Gregory P. Peterson, Francis T. Purcell and Eugene L. Weisbein are members

of the Town Board of the Town of Hempstead and that the Town Board has some zoning powers.

10. Upon information and belief, deny each and every allegation of paragraphs 67 and 68 of the complaint and all the subdivisions thereunder, except admit that the County of Nassau has authority to dispose of real property in accordance with Section 11-8.0 of the Nassau County Administrative Code.

11. Upon information and belief, deny each and every allegation of paragraph 69 of the complaint, except admit that negotiations are pending to lease land for the construction of a hotel at Mitchel Field.

12. Upon information and belief, deny each and every allegation of paragraphs 70 and 71 of the complaint, except admit that public officials of the Town of Hempstead and the County of Nassau have expressed opposition to certain types of low income housing.

13. Upon information and belief, deny each and every allegation of paragraph 73 of the complaint, except admit that the Moses Committee proposed that housing be constructed at Mitchel Field on 44 acres at most and that such housing be of a low density, high quality one-family type on 10,000 square foot plots.

14. Upon information and belief, deny each and every allegation of paragraphs 74, 75 and 76 of the complaint, except admit that the reports referred to thereunder were made and submitted and the language speaks for itself.

15. Upon information and belief, deny each and every allegation of paragraph 77 of the complaint, except allege that housing has been planned for occupancy by senior citizens.

16. Upon information and belief, deny each and every allegation of paragraph 79 of the complaint, except admit that the Town of Hempstead made certain zoning ordinances purporting to affect the land at Mitchel Field.

17. Upon information and belief, deny each and every allegation of paragraph 82 of the complaint, except admit that there is a proposal to build 250 units of senior citizen housing.

18. Upon information and belief, deny each and every allegation of paragraph 86 of the complaint, except admit that Nassau County appropriated and disbursed moneys for professional advice as to the development of Mitchel Field.

19. Upon information and belief, deny each and every allegation of paragraph 91 of the complaint, except admit that such a report was hurriedly issued before a change of administration, apparently for its political impact, and that the Nassau-Suffolk Planning Commission was not consulted before its issuance; nor did it ever affirm the contents thereof.

20. Upon information and belief, deny each and every allegation of paragraph 93 of the complaint, except admit that such a report was issued and the language therein speaks for itself.

21. Inasmuch as paragraphs 98 to 103 (of page 38) of the complaint, each inclusive, refer to the Environmental Protection Agency of the United States Government, and since that agency has filed an answer to the complaint herein, and the

County defendants do not at this time have information sufficient to arrive at any conclusions other than those contained therein, the County defendants at this time adopt as their answer to paragraphs 98 to 103 (of page 38), each inclusive, of the complaint the answer of the defendant Environmental Protection Agency.

22. Inasmuch as paragraphs 103 (of page 39) to 106 of the complaint, each inclusive, refer to the General Services Administration of the United States Government, and since that agency has filed an answer to the complaint herein and the County defendants do not at this time have information sufficient to arrive at any conclusions other than those contained therein, the County defendants therefore adopt as their answer to paragraphs 103 (on page 39) to 106, each inclusive, the answer of the defendant General Services Administration.

23. Inasmuch as paragraphs 107 to 111 of the complaint, each inclusive, refer to the Metropolitan Transportation Agency and since that agency has filed an answer to the complaint herein and the County defendants do not at this time have information sufficient to arrive at any conclusions other than those contained therein, the County defendants therefore adopt as their answer to paragraphs 107 to 111 of the complaint, each inclusive, the answer of the defendant Metropolitan Transportation Agency.

24. Upon information and belief, deny each and every allegation of paragraph 111 of the complaint, except admit that certain grants were made by the defendants Environmental Protection Agency and General Services Administration.

AS AND FOR A FIRST, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

25. This Court lacks jurisdiction over the subject matter of this action.

AS AND FOR A SECOND, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

26. The complaint fails to state a claim against defendants upon which relief can be granted.

AS AND FOR A THIRD, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

27. Defendants' actions of which plaintiffs complain are legislative acts and are not judicially reviewable.

AS AND FOR A FOURTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

28. The complaint fails to state facts which properly establish this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

AS AND FOR A FIFTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

29. The complaint does not establish that the plaintiffs are proper members of a class within the provisions of Rule 23 of the Federal Rules of Civil Procedure.

AS AND FOR A SIXTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

30. The defendants lack the power to construct housing. Article 18, Section 2 of the Constitution of the State of New York specifically enumerates the entities which are empowered to construct housing, and counties are not among the enumerated entities.

AS AND FOR A SEVENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

31. Defendants are under no constitutional or statutory obligation to provide housing or to sell, lease or transfer land for the purpose of construction of housing.

AS AND FOR AN EIGHTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

32. Defendants are under no constitutional obligation to prepare a comprehensive plan for the development of the property.

AS AND FOR A NINTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

33. A plan, if promulgated for the property, need not include a provision to build housing.

AS AND FOR A TENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

34. Defendants are not bound by any plan for the development of Mitchel Field until such time as same is approved by the Board of Supervisors and approved by the County Executive, or adopted by order of the Board of Supervisors over the veto of the County Executive.

AS AND FOR AN ELEVENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

35. Mitchel Field must be viewed in its regional aspect, not in isolation; that within a twenty-mile radius of Mitchel Field there has been considerable housing built to date, considerably more is in the planning stages, and there is other land available for further development.

AS AND FOR A TWELFTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

36. There is a high rate of unemployment in the County of Nassau, and to provide housing for non-residents seeking employment within the County would raise this rate to an even more unacceptable level, and further, would aggravate this existing unemployment condition and would not be in the best

interests and welfare of the present residents of Nassau County or even these non-residents seeking to become residents.

AS AND FOR A THIRTEENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

37. The Town of Hempstead, in which Mitchel Field is located, is the most densely populated area of the County at 11.28 per acre, as opposed to 6.88 for the next most densely populated area, Town of North Hempstead. To further increase this density would have disastrous effects on the ecology, environment and municipal services of the area.

AS AND FOR A FOURTEENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

38. The County is not discriminating against any class or classes of persons in the development of Mitchel Field.

AS AND FOR A FIFTEENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

39. Much of the land owned by the County was purchased from the United States Government at substantial discounts. In consideration of these discounts, some deeds contain restrictions limiting the uses to which this land can be put: to wit, educational and park purposes. Violations of these restrictions will cause the land in question to revert to the grantor.

AS AND FOR A SIXTEENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

40. The complaint fails to state facts which would tend to show an illegal act or acts on the part of County officers so as to give rise to an action for waste. A mere difference of opinion as to how to spend public funds does not give rise to an action for waste.

AS AND FOR A SEVENTEENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

41. The complaint alleges waste in the failure to develop Mitchel Field in a manner to generate tax revenues, and seeking to cause the County to construct low cost housing. Low cost housing cannot be built without tax abatement or remission, and therefore, to grant plaintiffs the relief sought would not generate additional tax revenues.

AS AND FOR AN EIGHTEENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, SAID DEFENDANTS, UPON INFORMATION AND BELIEF, ALLEGE AS FOLLOWS:

42. Plaintiffs, with notice of the material facts alleged in the complaint, refrained from commencing this action for a substantial period, during which the County of Nassau has entered into leases and contracts, embarked upon and completed certain construction, and therefore, plaintiffs have been guilty of such laches as would in equity bar them from maintaining this action.

WHEREFORE, the defendants, NASSAU COUNTY, NEW YORK, its officials, employees and agents; RALPH G. CASO, as County Executive of Nassau County; BOARD OF SUPERVISORS OF NASSAU COUNTY; and JOHN W. BURKE, GEORGE B. COSTIGAN, ALFONSE D'AMATO, ANDREW DI PAOLA, FRANCIS T. PURCELL and MICHAEL TULLY, as members of the Board of Supervisors, demand judgment dismissing the complaint, together with the costs and disbursements of this action.

Dated: Mineola, New York
September 25, 1972.

JOSEPH JASPAN
County Attorney of Nassau County

By_____
M. Arthur Eiberson
Deputy County Attorney
Attorney for Defendants NASSAU COUNTY, NEW YORK, its officials, employees and agents; RALPH G. CASO, as County Executive of Nassau County; BOARD OF SUPERVISORS OF NASSAU COUNTY; JOHN W. BURKE, GEORGE B. COSTIGAN, ALFONSE D'AMATO, ANDREW DI PAOLA, FRANCIS T. PURCELL and MICHAEL TULLY, as members of the Board of Supervisors
Office and Post Office Address
Nassau County Executive Building
Mineola, New York 11501

JDP:CH:sm
F.#720628

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

ABDON ACEVEDO; et al.,

Plaintiffs,

-against-

NASSAU COUNTY, NEW YORK, its officials, employees and agents; * * * ENVIRONMENTAL PROTECTION AGENCY; WILLIAM D. RUCKELSHAUS, as Administrator of the Environmental Protection Agency; GENERAL SERVICES ADMINISTRATION; ROD L. KREGER, as Acting Administrator of the General Services Administration; * * * , et al.,

Defendants.
----------x

ANSWER OF THE FEDERAL DEFENDANTS

Civil Action No.

72 C 305

Defendants, ENVIRONMENTAL PROTECTION AGENCY; WILLIAM D. RUCKELSHAUS, as Administrator of the Environmental Protection Agency; GENERAL SERVICES ADMINISTRATION; ROD L. KREGER, as Acting Administrator of the General Services Administration, by their attorney, ROBERT A. MORSE, United States Attorney for the Eastern District of New York, CYRIL HYMAN, Assistant United States Attorney, of counsel, answering the complaint herein, upon information and belief, allege:

1. Deny each and every allegation set forth in Paragraphs 1, 2, 3, 4 and all subdivisions thereunder, 5, 6, 8, 20 and all subdivisions thereunder, 27, 28, 102, 103 (as appearing on page 38 of the complaint), 104, 105, 106 and all subdivisions thereunder, 112, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153 and 154.

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 9 and all subdivisions thereunder, 10, 11 and all subdivisions thereunder, 12, 13, 14, 15 and all subdivisions thereunder, 16 and all subdivisions thereunder, 17 and all subdivisions thereunder, 18 and all subdivisions thereunder, 19 and all subdivisions thereunder, 21 and all subdivisions thereunder, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 and all subdivisions thereunder, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 107, 108, 109, 110, 111, 113 and all subdivisions thereunder, and 114.

3. Admit the allegations of Paragraph 98, except allege that the ENVIRONMENTAL PROTECTION AGENCY was formed pursuant to all of the provisions of Chapter 9 of Title 5, United States Code.

4. Deny the allegation of Paragraph 99 except admit that the Federal Water Pollution Control Act provides for federal grants to local governments for the construction of sewerage lines and treatment plants; that no such grant may be made unless the project being funded is included in a comprehensive program <u>for the prevention and control of water pollution developed under Section 7 of the Federal Water Pollution Control Act</u> (emphasis supplied); that if this requirement is satisfied, one of the criteria to be considered by the Administrator in deciding which projects to fund is "the public benefits to be derived by the construction and the propriety of Federal aid in such construc-

tion, the relation of the ultimate cost of constructing and maintaining the works to the public interest and to the public necessity for the works"; and that the Administrator may increase any grant by 10% "for any project which has been certified to him by an official State, metropolitan, or regional planning agency empowered under State or local laws or interstate compact to perform metropolitan or regional planning for a metropolitan area within which the assistance is to be used, or other agency or instrumentality designated for such purposes by the Governor (or governors in the case of interstate planning) as being in conformity with the comprehensive plan developed or in process of development for such metropolitan area."

5. Deny the allegations contained in Paragraph 100 but admit that EPA has paid or agreed to pay $32.3 million of the cost of Phase I of a project for the construction of interceptor sewers and a sewage treatment plant in Sewerage District 3 of Nassau County and that it has paid or agreed to pay $506,580 toward Phase II of that project. Deny that the communities to be aided by these grants discriminate in housing against "minority oppressed persons" in such a way as to impose any duties on EPA with respect to these grants.

6. As to Paragraph 103 appearing on page 39 of the complaint, the GENERAL SERVICES ADMINISTRATION alleges that it has such authority and responsibility as are conferred upon it by law.

7. The allegation contained in Paragraph 7 of the complaint presents a question of law which is respectfully referred to the Court for determination.

8. In response to Paragraph 142 of the complaint, defendants reallege their responses to Paragraphs 1,through 141 as though fully set forth hereinafter.

AS AND FOR A FIRST SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

9. This Court lacks jurisdiction over the subject matter of this action.

AS AND FOR A SECOND SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

10. The complaint fails to state a claim against defendants upon which relief can be granted.

AS AND FOR A THIRD SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

11. This action against federal officials is, in essence, an action against the UNITED STATES OF AMERICA to which the UNITED STATES OF AMERICA has not consented and, therefore, the action is barred by the soverign immunity of the UNITED STATES OF AMERICA.

AS AND FOR A FOURTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

12. Defendants' actions of which plaintiffs complain are committed to defendants' discretion and are not judicially reviewable.

AS AND FOR A FIFTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

13. Plaintiffs lack the requisite standing to

litigate this action.

AS AND FOR A SIXTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

14. Plaintiffs with notice of the material facts alleged in the complaint, refrained from commencing this action for a substantial period during which the UNITED STATES OF AMERICA has disposed of property and entered into contracts and grants and, therefore, plaintiffs have been guilty of such laches as should in equity bar them from maintaining this action.

AS AND FOR A SEVENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

15. That the federal agencies named as defendants herein are not entities subject to suit under the laws of the United States and therefore this Court lacks jurisdiction over said defendants.

AS AND FOR AN EIGHTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

16. That this action is premature and therefore this Court lacks jurisdiction over the subject matter.

WHEREFORE, the federal defendants demand judgment dismissing the complaint together with the costs and disbursements of this action, and for such other and further relief as to this Court may seem just and proper.

Dated: Brooklyn, New York
June 29, 1972

ROBERT A. MORSE
United States Attorney
Eastern District of New York
Attorney for Federal Defendants
225 Cadman Plaza East
Brooklyn, New York 11201

By: /S/
CYRIL HYMAN
Assistant U. S. Attorney

TO:

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LEONARD S. CLARK, ESQ.
Nassau County Law Services
Committee, Inc.
1570 Old Country Road
Westbury, New York 11590

Attorneys for Plaintiffs

TA#0114
AL/jp

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

ABDON ACEVEDO, et al, :

Plaintiffs :

- against - :

NASSAU COUNTY, NEW YORK, et al, :

Defendants. :

- x

ANSWER

Civil Action No.
72C 305

DEFENDANT, Town of Hempstead, New York, its officials, employees and agents; Town Board of the Town of Hempstead; James D. Bennett, Alfonse D'Amato, Anthony C. Imbarrato, Leo F. McGinity, Joseph P. Muscarella, Gregory P. Peterson, Francis T. Purcell and Eugene Weisbein, as members of the Town Board, by their attorney Howard E. Levitt, Esq., answering the complaint, upon information and belief, allege as follows:

FIRST: Deny each and every allegation contained in paragraphs of the complaint designated 2, 3, 4, 5, 6, 7, 8, 15(c), 20(a), 20(b), 20(c), 20(d), 20(e), 20(f), 27, 28, 29, 72, 73, 77, 78, 80, 81, 83, 84, 85, 88, 89, 90, 92, 94, 95, 96, 97, 102, 103, 105, 106,110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153 and 154.

SECOND: Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated 9(a), 9(b), 9(c), 9(d), 9(e), 9(f), 10, 11(a), 11(b), 12,13, 14, 15(a), 15(b), 16(a), 16(b), 17(a), 17(b), 18(a), 18(b), 18(c), 18(d), 19(a), 19(b), 19(c), 86, 87, 91, 98, 99, 101, 103(p.39), 104,107, 108 and 109.

THIRD: Deny each and every allegation contained in paragraph 1, except admit that portions of Mitchel Field are vacant and developable.

FOURTH: Deny so much of paragraph designated 23 as alleges that Nassau County Board of Supervisors is the executive body of the County and that its determinations and implementations are responsible for the wasting of Mitchel Field and admits all else.

FIFTH: Deny each and every allegation contained in paragraph 24, except admit that defendant, Ralph G. Caso, is the County Executive of Nassau County.

SIXTH: Deny each and every allegation contained in paragraph 25, except admit that defendant, Town of Hempstead, is one of three lesser equal political subdivisions known as Towns, which comprise Nassau County, that Mitchel Field is located entirely within the Town of Hempstead.

SEVENTH: Deny each and every allegation contained in paragraph 26, except admit that the individualmembers of the Town Board are correctly stated therein and that said Town Board is responsible for the zoning of land within the Town.

EIGHTH: Deny each and every allegation contained in paragraphs 67 and 68 except admit that Nassau County has the authority to dispose of its real property pursuant to statutes made and provided.

NINTH: Deny each and every allegation contained in paragraph designated 69, except admit that negotiations are pending to lease certain land at Mitchel Field for the construction of a hotel.

TENTH: Deny each and every allegation contained in paragraphs 70 and 71, except admit that opposition to certain types of low-income housing have been expressed.

ELEVENTH: Deny each and every allegation contained in paragraphs 74, 75 and 76, except admit that such reports were made and submitted.

TWELFTH: Deny each and every allegation contained in paragraph 79, except admit that certain portions of Mitchel Field have been zoned for "industry" and "edu-cultural" purposes and that a portion of Mitchel Field was zoned for "hotel" use for transients.

THIRTEENTH: Deny each and every allegation contained in paragraph 82, except admit that a proposal has been made to construct 250 units for senior citizen housing.

FOURTEENTH: Deny each and every allegation contained in paragraph 93, except admit that a report was issued.

FIFTEENTH: Deny each and every allegation contained in paragraph 100 insofar as the same refers to communities which discriminate and denies knowledge or information sufficient to form a belief as to all else.

AS AND FOR A FIRST, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

SIXTEENTH: This Court lacks jurisdiction over the subject matter of this action.

AS AND FOR A SECOND, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

SEVENTEENTH: The complaint fails to state a claim against defendants upon which relief can be granted.

AS AND FOR A THIRD, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

EIGHTEENTH: Defendants' actions of which plaintiffs complain are legislative acts and are not judicially reviewable.

AS AND FOR A FOURTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

NINETEENTH: The complaint fails to state facts which properly establish this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

AS AND FOR A FIFTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

TWENTIETH: The complaint does not establish that the plaintiffs are proper members of a class within the provisions of Rule 23 of the Federal Rules of Civil Procedure.

WHEREFORE, defendants, Town of Hempstead and the individually named members of the Town Board of the Town of Hempstead demand judgment dismissing the complaint in all respects.

S/ HOWARD E. LEVITT

HOWARD E. LEVITT, ESQ.
Town Attorney and Attorney for the Town of Hempstead and the Town Board
Hempstead Town Hall
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TO; DENISON RAY

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

ABDON ACEVEDO; LOUIS DE GIACOMO; ADELE GRANT; JUDITH LUSTERMAN AND DON-DAVID LUSTERMAN; ALICE PERLMAN AND JULIUS PERLMAN; BETTY ANN REDFERN; RUBY WILLIAMS; BALDWIN COUNCIL FOR HUMAN RIGHTS; and LONG ISLAND REGION NAACP; on behalf of themselves and all others similarly situated,

Plaintiffs,

-v.-

NASSAU COUNTY, NEW YORK, its officials, employees and agents; RALPH G. CASO, as County Executive of Nassau County; BOARD OF SUPERVISORS OF NASSAU COUNTY; JOHN W. BURKE, GEORGE B. COSTIGAN, ALFONSE D'AMATO, ANDREW DI PAOLA, FRANCIS T. PURCELL and MICHAEL TULLY, as members of the Board of Supervisors; TOWN OF HEMPSTEAD, NEW YORK, its officials, employees and agents; TOWN BOARD OF THE TOWN OF HEMPSTEAD; JAMES D. BENNETT, ALFONSE D'AMATO, ANTHONY C. IMBARRATO, LEO F. MCGINITY, JOSEPH P. MUSCARELLA, GREGORY P. PETERSON, FRANCIS T. PURCELL and EUGENE WEISBEIN, as members of the Town Board; ENVIRONMENTAL PROTECTION AGENCY; WILLIAM D. RUCKELSHAUS, as Administrator of the Environmental Protection Agency; GENERAL SERVICES ADMINISTRATION; ROD L. KREGER, as Acting Administrator of the General Services Administration; METROPOLITAN TRANSPORTATION AUTHORITY; and WILLIAM J. RONAN, as Chairman of the Metropolitan Transportation Authority,

Defendants.

- -x

ANSWER

Civil Action No. 72C 305

The defendants, METROPOLITAN TRANSPORTATION AUTHORITY and WILLIAM J. RONAN, answering the complaint herein:

1. Deny any knowledge or information sufficient to form a belief thereof as to each and every allegation contained in paragraphs numbered

"1," "2," "3," "4," "5," "6," "7," "8," "9(a)," "9(b), "9(c)," "9(d)," "9(e)," "9(f)," "10," "11(a)," "11(b)," "12," "13," "14," "15(a)," "15(b)," "15(c)," "16(a)," "16(b)," "17(a)," "17(b)," "18(a)," "18(b)," "18(c)," "18(d)," "19(a)," "19(b)," "19(c)," "20(a)," "20(b)," "20(c)," "20(d)," "20(e)," "20(f)," "21(a)," "21(b)," "21(c)," "21(d)," "22," "23," "24," "25," "26," "27," "28," "30," "31," "32," "33," "34," "35," "36," "37," "38," "39," "40," "41," "42," "43," "44," "45," "46," "47," "48," "49," "50," "51," "52," "53," "54," "55," "56," "57," "58," "59," "60," "61," "62," "63," "64," "65," "66," "67," "68," "69," "70," "71," "72," "73," "74," "75," "76," "77," "78," "79," "80," "81," "82," "83," "84," "85," "86," "87," "88," "89," "90," "91," "92," "93," "94," "95," "96," "97," "98," "99," "100," "101," "102," "103," "104," "105," "106," "110," "111," "112," "113," "114," "115," "116," "117," "118," "119," "120," "121," "122," "123," "124," "125," "126," "127," "128," "129," "130," "131," "132," "133," "134," "135," "136," "137," "138," "139," "140," "141," and "142."

2. Deny any knowledge or information sufficient to form a belief thereof as to each and every allegation contained in paragraph numbered "29," except that it is admitted that the defendant, METROPOLITAN TRANSPORTATION AUTHORITY, is a public benefit corporation of the State of New York for the purpose of the continuance, further development and improvement of commuter transportation and other services related thereto within the Metropolitan Cummuter Transportation District, and that the defendant, WILLIAM J. RONAN is the Chairman of the Metropolitan Transportation Authority.

3. Admit each and every allegation thereof contained in paragraph numbered "107."

4. Neither admit nor deny each and every allegation thereof contained in paragraphs numbered "108" and "109" since the allegations contained therein paraphrase sections of the Public Authorities Law of the State of New York and such sections of the law speak for themselves.

5. Deny each and every allegation thereof contained in paragraphs numbered "143," "144," "145," "146," "147," "148," "149," "150," "151," "152," "153," and "154."

AS AND FOR A FIRST, SEPARATE AND COMPLETE DEFENSE:

6. The complaint fails to state facts sufficient to constitute a cause of action against defendants, METROPOLITAN TRANSPORTATION AUTHORITY and WILLIAM J. RONAN.

AS AND FOR A SECOND, SEPARATE AND COMPLETE DEFENSE:

7. Plaintiffs lack the capacity to sue defendants, METROPOLITAN TRANSPORTATION AUTHORITY and WILLIAM J. RONAN.

AS AND FOR A THIRD, SEPARATE AND COMPLETE DEFENSE:

8. The Court lacks jurisdiction over the defendants, METROPOLITAN TRANSPORTATION AUTHORITY and WILLIAM J. RONAN.

WHEREFORE, defendants, METROPOLITAN TRANSPORTATION

AUTHORITY and WILLIAM J. RONAN, ask that the complaint herein be dismissed as against them with costs.

GEORGE M. ONKEN
Attorney for Defendants,
METROPOLITAN TRANSPORTATION AUTHORITY and
WILLIAM J. RONAN,
Jamaica Station
Jamaica, New York 11435

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ABDON ACEVEDO; LOUIS DE GIACOMO; ADELE GRANT; JUDITH LUSTERMAN and DON-DAVID LUSTERMAN; ALICE PERLMAN and JULIUS PERLMAN; BETTY ANN REDITON; RUBY WILLIAMS; BALDWIN COUNCIL FOR HUMAN RIGHTS; and LONG ISLAND REGION NAACP; on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

NASSAU COUNTY, NEW YORK, its officials, employees and agents; RALPH G. CASO, as County Executive of Nassau County; BOARD OF SUPERVISORS OF NASSAU COUNTY; JOHN W. BURKE, GEORGE B. COSTIGAN, ALFONSE D'AMATO, ANDREW DI PAOLA, FRANCIS T. PURCELL and MICHAEL TULLY, as members of the Board of Supervisors; TOWN OF HEMPSTEAD, NEW YORK, its officials, employees and agents; TOWN BOARD OF THE TOWN OF HEMPSTEAD; JAMES D. BENNETT, ALFONSE D'AMATO, ANTHONY C. IMBARRATO, LEO F. McGINITY, JOSEPH P. MUSCARELLA, GREGORY P. PETERSON, FRANCIS T. PURCELL and EUGENE WEISBEIN, as members of the Town Board; ENVIRONMENTAL PROTECTION AGENCY; WILLIAM D. RUCKELSHAUS, as Administrator of the Environmental Protection Agency; GENERAL SERVICES ADMINISTRATION; ROD L. KREGER, as Acting Administrator of the General Services Administration; METROPOLITAN TRANSPORTATION AUTHORITY; and WILLIAM J. RONAN, Chairman of the Metropolitan Transporation Authority,

Defendants.

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72-C-305

MEMORANDUM and ORDER

August 15, 1972

A p p e a r a n c e s :

Denison Ray, Esq., Suburban Action Institute, 180 East Post Road, White Plains, New York, for plaintiffs

Howard E. Levitt, Esq., by Albert Leone, Esq., Hempstead Town Hall, Main Street, Hempstead, New York, for defendant Town of Hempstead

Joseph Jaspan, Esq., by Arthur Eiberson, Esq., Nassau County Executive Building, Mineola, New York, for defendant Nassau County

COSTANTINO, D.J.

This case is a class action seeking to compel Nassau County to prepare a comprehensive plan for the development of Mitchell Field to include low and moderate income housing and to further compel the Town of Hempstead to zone Mitchell Field in accordance with that comprehensive plan.

Defendants Nassau County and Town of Hempstead seek a protective order pursuant to Rule 26(c) F.R.Civ.P., restricting the deposing of their defendant public officials, Ralph G. Caso, Nassau County Executive; John W. Burke, Supervisor, Town of Oyster Bay; George B. Costigan, Supervisor, City of Long Beach; Francis T. Purcell, Presiding Supervisor, Town of Hempstead, Alphonse

D'Amato, Supervisor, Town of Hempstead; Andrew DiPaola, Supervisor, City of Glen Cove; Michael Tully, Supervisor, Town of North Hempstead, and further request the court to instruct plaintiffs to depose the county and town officials at their headquarters. Nassau County and all the Town defendants further request the court to grant a motion to strike plaintiffs complaint pursuant to Rule 12(f) F.R. Civ.P. and an order for a more definite statement pursuant to Rule 12(e) F.R.Civ.P.

After argument on the motion for a protective order and submission on the motions for a more definite statement and the motion to strike, the court initially denies the motion of Nassau County and Town of Hempstead for a protective order. In so holding, the court is mindful of decisions granting and denying the deposing of federal cabinet members, Weir v. U.S., 310 F.2d 149 (8th Cir. 1962), Peoples v. U.S. Department of Agriculture, 427 F.2d 561 (D.C. Cir. 1970), and decisions granting the deposing of city officers. Joy Mfg. Co. v. City of New York, 30 F.Supp. 403 (1939). None of these cases is directly on point as the former deal with federal officials, while the latter deal with agency heads similar to the type of officials

which defendants are willing to allow plaintiffs to depose. This court in the exercise of its broad discretionary powers in the area of discovery feels that the minor inconvenience afforded to the county officials is offset by the desirability of plaintiffs being afforded their right to adequate discovery of relevant and material information. In addition the court takes cognizance of the fact that plaintiffs have agreed to take the depositions of these officials at their headquarters so as to minimize inconvenience and enable defendants to refer to necessary documents.

In addition, the court in part grants defendant Nassau County and Town defendants' motion to strike pursuant to Rule 12(f) F.R.Civ.P. Although aware that motions to strike are generally disfavored, the court feels that defendants are unjustifiably burdened in that "they are forced to select the relevant material from a mass of verbiage." Wright & Miller, Federal Practice and Procedure: Civil § 1281. Therefore, the following objectionable portions of the complaint will be striken:

1. all of Article VII entitled "Mitchell Field's Tortured History"

2. all of Article VIII entitled "Critical Need for Housing in Nassau County and the Town of Hempstead."

The court denies defendants Nassau County and Town defendants' motion for a more definite statement pursuant to Rule 12(e) F.R.Civ.P. and defendant Town of Hempstead's motion requesting plaintiffs to serve on defendants a concise statement with counts against the Town of Hempstead separately stated and numbered. The court holds that plaintiffs have fulfilled the minimal standard of relatively skeletal pleadings required by the Federal Rules of Civil Procedure and that defendants can now adequately answer plaintiffs' complaint.

> One fundamental aspect of the federal rules is the notion that a plaintiff who identifies the transaction or occurrence from which his grievance stems and specifies the injury inflicted upon him in a way that at least indicates some possibility of a right to legal redress has stated a claim for relief and is entitled to attempt to flush out his case by discovery.

Wright & Miller, Federal Practice and Procedure: Civil § 1376.

Finally, the court finds that defendant Nassau County has misread Investment Properties International Ltd.,

et al. v. IOS, Ltd., docket no. 72-1060, United States Court of Appeals for the Second Circuit, April 21, 1972, as the case dealt with the plaintiff's right to initially depose defendants "to establish standing and subject matter jurisdiction in federal district court," not the right of defendant to initially depose plaintiff. Therefore, the court orders that defendants who have previously been noticed by plaintiffs for deposition should first be deposed within 60 days. Nassau County officials should be deposed at the Nassau County Executive Building in Mineola, New York. The town officials should be deposed at Town Hall, Hempstead, New York. Furthermore, plaintiffs should refine the questions they wish to ask the elected officials so as not to unduly burden said officials.

So ordered.

Mark C. Costantino

U. S. D. J.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABDON ACEVEDO; LOUIS DE GIACOMO; ADELE GRANT; JUDITH LUSTERMAN and DON-DAVID LUSTERMAN; ALICE PERLMAN and JULIUS PERLMAN; BETTY ANN REDFERN; RUBY WILLIAMS; BALDWIN COUNCIL FOR HUMAN RIGHTS; and LONG ISLAND REGION NAACP; on behalf of themselves and all others similarly situated,

MAY 18 1973

Plaintiffs,

73-C-305

v.

MEMORANDUM and ORDER

NASSAU COUNTY, NEW YORK, its officials, employees and agents; RALPH G. CASO, as County Executive of Nassau County; BOARD OF SUPERVISORS OF NASSAU COUNTY; JOHN W. BURKE, GEORGE B. COSTIGAN, ALFONSE D'AMATO, ANDREW DI PAOLA, FRANCIS T. PURCELL and MICHAEL TULLY, as members of the Board of Supervisors; TOWN OF HEMPSTEAD, NEW YORK, its officials, employees and agents; TOWN BOARD OF THE TOWN OF HEMPSTEAD; JAMES D. BENNETT, ALFONSE D'AMATO, ANTHONY C. IMBARRATO, LEO F. McGINITY, JOSEPH P. MUSCARELLA, GREGORY P. PETERSON, FRANCIS T. PURCELL and EUGENE WEISBEIN, as members of the Town Board; ENVIRONMENTAL PROTECTION AGENCY; WILLIAM D. RUCKELSHAUS, as Administrator of the Environmental Protection Agency; GENERAL SERVICES ADMINISTRATION; ROD L. KREGER, as Acting Administrator of the General Services Administration; METROPOLITAN TRANSPORTATION AUTHORITY; and WILLIAM J. RONAN, as Chairman of the Metropolitan Transportation Authority,

Defendants.

87-A

A p p e a r a n c e s :

Lois D. Thompson, Esq., Suburban Action Institute, 180 East Post Road, Tarrytown, New York, for plaintiffs

Hon. Robert A. Morse, U.S. Attorney, E.D.N.Y., by Cyril Hyman, Esq., for United States defendants

Hon. Joseph Jaspan, Nassau County Executive Building, Mineola, New York, for Nassau County defendants

COSTANTINO, District Judge

On May 4, 1973 this court heard argument on plaintiffs' motion for certification of a class action. The case concerns the development of Mitchel Field. Specifically, plaintiffs seek a declaratory judgment holding that Nassau County's failure to provide low income housing on Mitchel Field violates the United States Constitution and certain statutes of the United States. In addition, plaintiffs seek to enjoin any development of Mitchel Field not in accordance with a comprehensive plan which includes a significant amount of housing for low income groups. In order to achieve the aforementioned objective, plaintiffs seek to enjoin (1) the Town of Hempstead from zoning Mitchel Field other than in accordance with a comprehensive plan; (2) the Metropolitan Transportation Authority from providing transportation other than that required in a

comprehensive plan; (3) the General Services Administration and the Environmental Protection Agency from funding and constructing on Mitchel Field other than in accordance with a comprehensive plan.

Accordingly, the court now must face the issue of the standing of each plaintiff. The court finds that Don-David Lusterman and Alice and Julius Perlman lack standing. They will therefore be striken as plaintiffs in accordance with the reasons stated by the court at the time of oral argument. The court finds that the remaining individual plaintiffs appear to fulfill the requirements of standing. As to the institutional plaintiffs, Baldwin Council for Human Rights and Long Island Region N.A.A.C.P., the court finds they have standing in the action. In so holding the court is mindful of the restrictions on standing set out in the case of Sierra Club v. Morton, 405 U.S. 727, 738 (1972) "the party seeking review must himself have suffered an injury." Yet this court finds that the Supreme Court itself held on page 739 of the aforementioned Sierra opinion:

> It is clear that an organization whose members are injured may represent those members in a

proceeding for judicial review. See e.g., N.A.A.C.P. v. Button, 371 U.S. 415, 428.

The court grants the plaintiffs' request for a certification of class action. The court defines the class as all Black or Spanish-speaking persons residing or seeking to reside in said county and all persons residing or seeking to reside in said county, who are eligible for low income housing as defined in state or federal statutes and regulations. In so defining the class the court holds that this action is not maintainable by the taxpayer class.

This suit appears to fulfill the necessary requirements of amended Rule 23, Fed.R.Civ.P. Specifically, the class is too numerous for joinder of all its members, there are questions of law and fact common to the class, the claims of the representative parties are typical of the claims of the class, and the representative parties appear to fairly and adequately protect the interests of the class. In addition, the class action is maintainable pursuant to amended Rule 23(b)(2) Fed.R.Civ.P. in that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby

making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. . . ."

After having established that a viable class exists, the court is faced with the question of notice to the class members. Although a class action maintainable under 23(b)(1) or 23(b)(2) does not require that members be given notice pursuant to 23(c)(2) as does 23(b)(3), the Second Circuit Court of Appeals has interpreted Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950) as requiring "that notice is required as a matter of due process in all representative actions," Eisen v. Carlisle & Jacquelin, 391 F.2d 555, 564 (1968).

Individual notice pursuant to Eisen v. Carlisle & Jacquelin, New York Law Journal, May 3, 1973, at 6, col. 7, is unnecessary in the present case as identification of any number of members of the class cannot readily be made. In addition, the present suit, unlike the recent Eisen case, does not involve a claim of damages. Accordingly, the court orders the plaintiffs to give notice to the class in the following manner: publication three times during

the two week period following the filing of this memorandum and order in the following newspapers: Newsday and The New York Daily News. In addition, plaintiffs are to post notice of said action in the welfare centers, legal services offices and the community action program centers located in Nassau County.

Motion for certification of a class action granted. Notice to class members to proceed in accordance with this memorandum and order.

U. S. D. J.

92-A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ABDON ACEVEDO; LOUIS DE GIACOMO; ADELE GRANT; JUDITH LUSTERMAN and DON-DAVID LUSTERMAN; ALICE PERLMAN and JULIUS PERLMAN; BETTY ANN REDFERN; RUBY WILLIAMS, and LONG ISLAND REGION NAACP; on behalf of themselves and all others similarly situated,

Plaintiffs,

73-C-305

v.

NASSAU COUNTY, NEW YORK, its officials, employees and agents; RALPH G. CASO, as County Executive of Nassau County; BOARD OF SUPERVISORS OF NASSAU COUNTY; JOHN W. BURKE, GEORGE B. COSTIGAN, ALFONSE D'AMATO, ANDREW DI PAOLA, FRANCIS T. PURCELL and MICHAEL TULLY, as members of the Board of Supervisors; TOWN OF HEMPSTEAD, NEW YORK, its officials, employees and agents; TOWN BOARD OF THE TOWN OF HEMPSTEAD; JAMES D. BENNETT, ALFONSE D'AMATO, ANTHONY C. IMBARRATO, LEO F. McGINITY, JOSEPH P. MUSCARELLA, GREGORY P. PETERSON, FRANCIS T. PURCELL and EUGENE WEISBEIN, as members of the Town Board; ENVIRONMENTAL PROTECTION AGENCY; WILLIAM D. RUCKELSHAUS, as Administrator of the Environmental Protection Agency; GENERAL SERVICES ADMINISTRATION; ROD L. KREGER, as Acting Administrator of the General Services Administration; METROPOLITAN TRANSPORTATION AUTHORITY; and WILLIAM J. RONAN, as Chairman of the Metropolitan Transportation Authority,

Defendants.

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JAN 30 1974

93-A

Appearances:

Richard F. Bellman, Esq. and Lois D. Thompson, Esq., Suburban Action Institute, 150 White Plains Road, Tarrytown, New York, for plaintiffs

Hon. Joseph Jaspan, County Attorney of Nassau County, Nassau County Executive Building, Mineola, New York, for Nassau County defendants

Hon. John F. O'Shaughnessy, Town Attorney, Town Hall, Hempstead, New York, by Albert Leone, Esq., for Town of Hempstead

Hon. Edward J. Boyd, V, Acting U.S. Attorney, E.D.N.Y., by Cyril Hyman, Esq., for defendant General Services Administration

COSTANTINO, D.J.

This suit is instituted pursuant to the Civil Rights Act (42 U.S.C. §§ 1981, et seq.), the Fair Housing Act of 1968 (42 U.S.C. §§ 3601, et seq.), and the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. The court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4) (1971).

The action is being maintained on behalf of the class of all Blacks or Spanish-speaking persons residing or seeking to reside in the County of Nassau who are

eligible for low-income housing as defined in state or federal statutes and regulations. Rule 23, Fed.R.Civ.P.

At issue is the future of approximately 685 acres of land located in Hempstead Township, Nassau County, New York. The tract of land, commonly known as Mitchel Field, was formerly a United States Air Force base and comprised 1,125.7 acres. In 1961 after the Air Force had terminated operations at the base the land was declared surplus to the needs of the Federal Government. There followed a series of sales by which various governmental agencies acquired parcels at the Field. The plaintiffs question the propriety of the proposed development of the parcels acquired by Nassau County (approximately 630 acres) and the General Services Administration (approximately 55 acres).

Except for 66.9 acres reserved for park lands, the County purchased its parcels for full value and holds them free of any restrictive covenants. It now proposes the following land uses for its holdings:

(1) an educational, cultural and civic center;
(2) commercial and light industrial buildings;
(3) recreational facilities;
(4) a convention center;

(5) a natural reserve (Hempstead Plains);
(6) a bus depot; and
(7) senior citizen housing.

The General Services Administration has publicized its desire to build a federal office building on its land.

It must be conceded that save for 250 units of senior citizen housing, the officials of Nassau County are avowedly opposed to the construction of any form of housing at Mitchel Field. The plaintiffs contend that the County's failure to provide for or plan for low-income housing at Mitchel Field is motivated by racial bias, an intent to cause, contribute to or perpetuate patterns of residential racial segregation; and that in any event the County's actions with respect to low-income housing at Mitchel Field will have the effect of perpetuating existing racial segregation in the County. Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968); Mahaley v. Cuyahoga Metropolitan Housing Authority, 355 F.Supp. 1245 (N.D. Ohio 1973); Banks v. Perk, 341 F.Supp. 1175 (N.D. Ohio 1972); Crow v. Brown, 332 F.Supp. 382 (N.D. Ga. 1971); Kennedy Park Homes Association v. City of Lackawanna, 318 F.Supp. 669 (W.D.N.Y. 1970), aff'd 436 F.2d 108 (2d Cir.

1972). Furthermore, the plaintiffs assert that the County's proposed construction at Mitchel Field of 250 units of senior citizen housing, which will be almost exclusively occupied by whites, in light of its adamant refusal to include low-income housing there, which would be almost exclusively occupied by Blacks, is racially discriminatory - a violation of the equal protection clause of the Fourteenth Amendment. Hawkins v. Town of Shaw, 437 F.2d 1286 (5th Cir. 1971). Finally, plaintiffs charge that construction of a federal office building at Mitchel Field will constitute a violation of Executive Order 11512, 35 Fed.Reg. 3979 (March 3, 1970), and the Fair Housing Act of 1968 (42 U.S.C. §§ 3601, et seq.).

Plaintiffs seek declaratory and injunctive relief to insure that low-income housing on a non-discriminatory basis will be constructed at Mitchel Field.[1/] Specifically

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1/ On December 17, 1973, the court issued an order of preliminar injunction enjoining the defendants Nassau County and its officials from issuing any bonds or from authorizing capital expenditures for the construction of a recreation center or any other improvements or embellishments of Mitchel Field Park.

they request an order requiring that:

(1) the County comprehensively plan for the development of Mitchel Field to include a significant amount of low and moderate income housing;

(2) the Town of Hempstead rezone land at Mitchel Field and promptly take whatever other steps are necessary in order to enable the housing uses proposed in said plan;

(3) the County and Town and whomever in addition to the County and Town may accept responsibility for development of housing proposed in said comprehensive plan, develop housing which is available to all persons regardless of race, national origin, ethnic background and economic status; and

(4) the defendants permit and encourage meaningful participation of plaintiffs, their attorneys and urban planners retained by them in the drafting and consideration of said comprehensive plan, and that defendants submit said comprehensive plan to this court, for approval, within 90 days from the date of entry of this court's order herein.

Plaintiffs' Proposed Findings of Fact at 75. With regard to defendant General Services Administration the plaintiffs request that the court:

> [D]eclare that GSA has violated the federal site selection laws and regulations by submitting a prospectus for a federal office building to OMB prior to ascertaining the availability of low and moderate income housing in the area and embarking on any and all

> necessary affirmative acts with regard to such housing;

and further that:

> GSA should be enjoined from taking any further action towards the design or construction of a federal office building at Mitchel Field until the provisions of Executive Order 11512 have been met and adequate low income housing on a non-discriminatory basis has been made available.

Plaintiffs' Proposed Findings of Fact at 78-79.

The threshold issue to be decided by the court is whether the alleged activities of Nassau County and the General Services Administration relating to their holdings at Mitchel Field result in racially discriminatory treatment. It is well settled that:

> [A]ny municipal conduct which has the purpose or effect of discriminating against [Blacks] or perpetuating racial concentration or segregation in housing is violative of the civil rights of [Blacks] and a denial of equal protection, absent a showing by the municipality of a supervening and compelling necessity.... [G]iven a prima facie showing of discriminatory effect, the [municipality] must come forward with a supervening necessity or compelling interest to overcome a finding of discrimination.

Mahaley v. Cuyahoga Metropolitan Housing Authority, supra at 1264. Similarly, it has been held that:

> Since this nation is committed to a policy of balanced and dispersed public housing, low-income Blacks can no more be confined to a concentrated area than that they can be required to send their children to segregated schools.... Moreover, deprivation of equal housing rights caused to some extent by the neglect or thoughtlessness of local officials constitutes an equal protection violation.

Banks v. Perk, supra at 1179-80.

Consequently, if a prima facie showing of racially discriminatory treatment is made the defendants will be required to justify their actions by establishing a legitimate and compelling governmental interest.

Proof of racial discrimination may be established either by proof of purpose or effect, Reitman v. Mulkey, 387 U.S. 369 (1967); good faith is not a defense, Hunter v. Erickson, 393 U.S. 385 (1969), and Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). Official action which may appear neutral on its face, but has the inevitable effect of either tying present rights to the discriminatory patterns of the past or placing a special burden upon Blacks is unlawful. Gaston County v. United States, 395 U.S. 285 (1969); United States v. Louisiana, 380 U.S. 145 (1965).

In Kennedy Park Homes Association v. City of Lackawanna, 318 F.Supp. 669 (W.D.N.Y. 1970), Judge Curtin appropriately described the court's task as follows:

> Judicial inquiry into the purpose or effect of governmental action is not limited to the moment that that action occurs. Not only must the "immediate objective" of governmental action be considered, but the "historical context" and "ultimate effect" of such action must be considered as well.... The inquiry must further assess the "reality" of the "law's impact" and consider the "background" against which state action operates to determine that reality.... Therefore, relevant to this inquiry are either past or prospective governmental actions which form a part of the background.

Id. at 694.

Nassau County is situated on Long Island and is bordered by the Borough of Queens, City of New York on the West and the County of Suffolk on the East. The County is politically subdivided into three townships, North Hempstead, Oyster Bay and Hempstead. Within the townships there are approximately 125 incorporated and unincorporated villages and two cities, the City of Glen Cove and the City of Long Beach.

In close proximity to New York City, Nassau

County has experienced a great influx of people. In 1970 its population had grown to 1,428,838, and was near saturation. U.S. Census '70, Nassau-Suffolk Regional Planning Board, at 4 (October, 1971) [hereinafter referred to as Bi-County Report].

Because of its suburban character the County has become an attractive place to live. Most of its residents live in privately-owned single family housing. The County has the highest median income level and the lowest percent of overcrowded housing in the New York City metropolitan area. However, the recent growth of its population has caused severe strains on the County's resources. The County has an extremely low land vacancy rate. There are shortages in almost all areas of municipal services, i.e., mass transportation, recreation facilities, sewers, and water supply. The cost of home ownership has risen sharply and there is a definite need for multifamily housing to accommodate the aged, the young and the poor residing within the County.

The population of Nassau County is not equally distributed among the three townships. Although it comprises

less than one-half of the land of the County, the Town of Hempstead has approximately two-thirds of the County's population, giving it a density of 6,447 people per square mile which is greatly in excess of the density of the other two townships. Concomitantly, the land available for new construction in the other townships is almost twenty times that which is available in the Town of Hempstead.

Blacks constitute approximately five percent of the population of Nassau County.[2/] Their settlement, however, has become one of increasing concentration. Over four-fifths of the Blacks residing in the County live in thirteen out of the one hundred twenty five villages in the County. Eight of these villages are located in the Town of Hempstead, four are located in North Hempstead and one is located in Oyster Bay. Because of its low zoning requirements and high density over seventy percent of the Blacks living in Nassau reside in the Town of Hempstead.

2/
In 1970 the non-white population of Nassau was 5.1% (up from 3.2% in 1960). Between 1960 and 1970, non-whites constituted 23.6% of the County's population growth - the non-white population increased 66.9% while the white population increased by 7.8%. Bi-County Report, Vol. 2.

Despite the recognized need and increased pressure for multifamily housing, the people of Nassau have zealously guarded the suburban character of their communities. Wary of increased urbanization, the residents of Nassau have voiced strong opposition to the construction of high density housing. Added to this problem is the fact that the Bi-County Planning Commission and other responsible planning organizations have suggested that a corridor of high density housing should be maintained through the middle of Nassau. This corridor would include most of Hempstead Township which already has the highest density in the County.

With respect to the development of Mitchel Field, all the planners who appeared before the court agreed that its primary function should be to serve as an educational, cultural and civic center. Suggestions have also been made to construct commercial offices, light industrial buildings and recreational facilities at Mitchel Field.[3/] Some have recommended that multifamily housing be constructed there.[4/]

3/ In 1966 while Eugene H. Nickerson was serving as County Executive, the County purchased approximately 153 acres of land in the Northwest quadrant of Mitchel Field for "industrial and recreational use."

4/ In 1966 the Town of Hempstead initiated negotiations for the

Everyone concerned with the development of Mitchel Field is in agreement that it should not provide solutions for county-wide problems. For this reason plans to construct a county seat there have been rejected. An overall planning objective for the development of Mitchel Field appears to be the creation of diverse activities, so as to create a "center of activity"; no one activity is to dominate. The housing suggested for Mitchel Field was to further these planning objectives, making Mitchel Field a viable center of activity.

As can be expected there have been conflicting views on the land uses that should be employed at Mitchel Field. Each view is of course influenced by personal interests, political persuasion and individual taste. Up

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purchase of 191 acres in the Northwest quadrant of Mitchel Field. The land was to be used for the construction of multifamily housing units, which would have provided among other things 500 units of low-income family housing. However, the land was eventually acquired by the County for other purposes.

Additionally, the Bi-County Planning Commission and other studies commissioned by the County have recommended the construction of high-rise apartment buildings at Mitchel Field. The housing proposed was to afford "a mix of housing opportunities," and was to include luxury, senior citizen and low-income family units.

to the present time no single plan has been adopted. It is certain, however, that save for a small amount of senior citizen housing, the County opposes the construction of housing at Mitchel Field.

Unquestionably the decision not to construct housing at Mitchel Field is in large part a result of public opposition. High-rise apartment buildings have been objectionable to the people of Nassau. They oppose the increased urbanization of their communities; they are opposed to any significant influx of children into their local school districts; and they are concerned about the increased demands for municipal services. Public housing has also been objected to because of the loss of revenue it causes and the increased burdens it places on the community's resources. By far, however, the most objectionable form of housing has been low-income family housing. It is clear from all the evidence that community opposition to this form of housing has been racially motivated.

In Nassau County low-income family housing is predominantly occupied by Blacks. Proposals for the construction of this form of housing have incurred immediate

and vehement opposition. As can be expected such heated opposition has not been ignored by the elected officials of Nassau. There is evidence of more than one housing proposal being dropped because of vehement community opposition. Future proposals are sure to take into consideration the strong feelings of the residents of Nassau County.

The residents of Nassau County, however, are not on trial. In judging the actions of the public officials of Nassau, community reaction to low-income family housing - the racial fears and prejudices manifested - is only one of many relevant indicia. It is relevant to this cause of action only insofar as it is given effect through the conduct of the officials of Nassau County acting under color of state law. In view of all the evidence in this case the court finds that there is no proof of official conduct which has as its purpose the containment of Blacks or which has the effect of denying Blacks rights and opportunities available to whites. The record shows just the opposite.

Nassau County has an Open Housing Law, which

according to the testimony of Kenneth R. Bedford, Regional Director of the Long Island Region National Association for the Advancement of Colored People, is actively enforced. The County Open Housing Law reads in pertinent part as follows:

> In the County of Nassau, with its population consisting of people of various races, creeds, colors, and national origins, there is no greater danger to the health, morals, safety, and welfare of the County and its inhabitants than the existence of groups and individuals reflecting prejudice against one another and antagonistic to each other because of differences of race, creed, color, or national origin. Many persons have been compelled to live in circumscribed sections under substandard, unhealthful, unsanitary, and crowded living conditions because of discrimination and segregation in housing... [A]cts of prejudice, intolerance, bigotry, and discrimination which deny a person the opportunity to sell, purchase, lease, rent, or obtain financing for the purchase or lease of housing accommodations because of race, creed, color, or national origin, threatens the fundamental rights and privileges of the inhabitants of the County of Nassau.... It shall be the duty of all County officers, officials and employees to exercise appropriate governmental functions relating to the use, sale, or occupancy of land, real property, or housing accommodations in such a manner consistent with law that all patterns of racially segregated housing existing in this County be eliminated and that the creation of any such patterns be prevented to the maximum extent that such a result can be achieved by such action.

With respect to low-income family housing the evidence adduced at trial evinces that the officials of Nassau have not disregarded the need that exists within the County. Prior to January, 1973, when the Federal Government imposed a moratorium on all federally funded housing programs, attempts had been made to construct a substantial amount of low-income family housing in the County. The present County Executive, acting both in his capacity as County Executive and formerly as the Presiding Supervisor for the Town of Hempstead, supported several proposals to alleviate the housing needs of the poor. In 1961 Mr. Caso was instrumental in the Town's attempt to purchase land at Mitchel Field so that low-income housing could be constructed there. In 1972 Mr. Caso proposed a "scattered site housing plan" whereby the Town of Hempstead would have constructed multifamily housing units throughout the Town. The proposed housing would have provided a mix of housing opportunities - 70% middle-income, 20% low-income and 10% senior citizen. Since taking office as County Executive Mr. Caso has appointed a County Housing Coordinator who is to function as a liaison with public and private housing groups to assist them in obtaining

funds from private, federal and state sources. Additionally Mr. Caso openly supported a proposed amendment to the New York State Constitution which would have granted the County authority to build housing; the amendment was rejected by the voters. Finally, there is evidence that despite the Federal Government's moratorium on housing funds, low-income family housing is being constructed within Nassau County, under the auspices of local municipalities.

The court must now face the problem of determining the reality of the circumstances underlying Nassau County's refusal to build high-rise apartments at Mitchel Field.[5/] Can it be said that the construction of high-rise apartments at Mitchel Field is necessary to dismantle racially segregated patterns of residential housing? The evidence before the court does not disclose the existence of fixed patterns of home ownership in Nassau County.

5/ Plaintiffs' attorneys have stated that they do not advocate the construction of any specific type of housing at Mitchel Field. However, high-rise apartments are the only housing which would conform to the land-utilization proposed by all planners. Indeed all housing recommendations made by the planners referred solely to high-rise dwellings.

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There are no physical boundaries separating whites from Blacks and there is considerable movement of Blacks into areas formerly occupied exclusively by whites. This is especially true of the Town of Hempstead where most of Nassau's Black population resides. Moreover, Mitchel Field is not outside of the areas of minority concentration. It borders on the Village of Hempstead, which has a high concentration of Blacks (one-third of its population is Black), and the Village of Uniondale which likewise has a significant Black population (eighteen percent of its population is Black). Additionally, Mitchel Field is in close proximity to other areas populated by significant numbers of Blacks and it is in an area which has the highest population density in the County. Finally, considering the availability of land throughout Nassau County that could be used to construct multifamily housing and the suburban character of the communities within the County there is no basis to support a finding that the construction of high-rise apartments at Mitchel Field is essential to the existence of low-income family housing in Nassau County.

The plaintiffs have failed to meet their burden of proof. The court finds that the preclusion of housing

at Mitchel Field does not have a racially discriminatory purpose or effect. The court further finds that the land uses proposed for the development of Mitchel Field have a rational and legitimate governmental purpose, and that there is no invidious discrimination. Dandridge v. Williams, 397 U.S. 471 (1970); McGowan v. Maryland, 366 U.S. 420 (1961); Boraas v. Village of Belle Terre, 476 F.2d 806 (2d Cir. 1973); see also Lindsey v. Normet, 405 U.S. 56 (1972); James v. Valtierra, 402 U.S. 137 (1971). Finally, with regard to the proposed construction of 250 units of senior citizen housing at Mitchel Field, what is conceded to be a "token amount," the court finds in light of all the evidence in this case that such actions are not the result of intentional and purposeful racial discrimination.

With respect to defendant General Services Administration the plaintiffs have also failed to sustain their burden of proof. The charges made against G.S.A. are without merit; rather the evidence discloses that G.S.A. is complying with the Federal Site Selection laws. Brookhaven Housing Coalition v. Kunzig, 341 F.Supp. 1026 (E.D.N.Y. 1972).

The foregoing opinion shall constitute the court's findings of fact and conclusions of law, as required by Fed.R.Civ.P. 52(a).

Accordingly, the action is dismissed.

U. S. D. J.

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FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ FEB 5 1974 ★
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABDON ACEVEDO, et al.,

Plaintiffs,

-against-

NASSAU COUNTY, et al.,

Defendants.

---

72 Civ. 305 (MAC)

FINAL JUDGMENT

This cause having come on for trial before the Court and the Court having filed its memorandum opinion dated January 30, 1974, and the cause now before the Court for final judgment, it is hereby

ORDERED AND ADJUDGED that final judgment be and the same is hereby entered for the defendants and against the plaintiffs and that this cause be and the same is hereby dismissed with prejudice as to the plaintiffs.

DONE AND ORDERED at New York, New York, this 5th day of February, 1974.

UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABDON ACEVEDO, et al.,

Plaintiffs,

-against-

NASSAU COUNTY, et al.,

Defendants.

---

72 Civ. 305 (MAC)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that plaintiffs ABDON ACEVEDO, BETTY ANN REDFERN, LONG ISLAND REGION NAACP, and BALDWIN COUNCIL FOR HUMAN RIGHTS, hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment entered by the District Court in this action on February 5, 1974, dismissing plaintiffs' complaint.

RICHARD P. BELLMAN
Attorney for Plaintiffs

Dated: February 13th, 1974.

CERTIFICATE OF SERVICE

This is to certify that on the 13th day of February, 1974, copies of the foregoing Notice of Appeal were served on counsel for the defendants, via first-class mail, postage pre-paid, as follows:

JOSEPH JASPAN, ESQ.
Attorney for the Nassau County Defendant
Nassau County Executive Guilding
Mineola, New York 11501

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(11)

ALBERT LEONE, ESQ.
Attorney for the Town of Hempstead Defendants
Hempstead town Hall, Town Hall Plaza
Main Street
Hempstead, New York 11550

CYRIL HYMAN, ESQ.
Attorney for Defendants, EPA, WILLIAM D.
RUCKELSHAUS, G.S.A and ROD L. GREGER
United States Court House
225 Cadman Plaza East
Brooklyn, New York 11201.

Dated:

RICHARD F. BELLER
Counsel for Plaintiffs

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABDON ACEVEDO, et al., Plaintiffs, -against- NASSAU COUNTY, et al., Defendants.	72 Civ. 305 (MAC) MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

On the basis of the attorney's affidavit of RICHARD F. BELLMAN, and upon the sworn testimony of plaintiff, BETTY ANN REDFERN, given at the trial in this matter appearing at pages 1065-1093 of the transcript, and upon all prior pleadings and proceedings had herein, plaintiff BETTY ANN REDFERN and the class represented hereby move this Court for leave, pursuant to 28 U.S.C. 1915 and Rule 24 F.R.A.P., to appeal in forma pauperis in the above-titled matter.

Respectfully submitted,

RICHARD F. BELLMAN
LOIS D. THOMPSON
Attorneys for Plaintiffs
Suburban Action Institute
150 White Plains Road
Tarrytown, New York 10591

BY: Richard F. Bellman
RICHARD F. BELLMAN

Dated: January 31, 1974.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABDON ACEVEDO, et al.,	:	72 Civ. 305 (MAC)
Plaintiffs,	:	AFFIDAVIT OF RICHARD F. BELLMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS
-against-	:	
NASSAU COUNTY, et al.,	:	
Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF WESTCHESTER)

RICHARD F. BELLMAN, being duly sworn, deposes and says:

1. I am counsel of record for the plaintiffs in the above-entitled case and file this affidavit in support of the motion by plaintiff BETTY ANN REDFERN, and the class represented, for leave to appeal in forma pauperis in the above-entitled action.

2. On January 30, 1974 this court filed a memorandum opinion dismissing the plaintiffs' complaint in this action. An appeal from that ruling will be taken to the United States Court of Appeals for the Second Circuit. A notice of appeal has not been filed as a final judgment has not as yet been entered by the Court.

3. Plaintiff BETTY ANN REDFERN is a low income, black citizen, who resides in Nassau County, New York, and who is confronted with a serious housing problem because of her low-income status and her race. She qualifies for residency in housing built under federal and state low-income-housing subsidy programs. This action has been maintained "on behalf of the class of all Blacks or Spanish-speaking persons residing or seeking to reside in the County of Nassau who are eligible for low-income housing

as defined in state or federal statutes and regulations." Memorandum opinion, pp. 2-3.

4. Plaintiff BETTY ANN REDFERN presented sworn testimony before this Court on July 12, 1973 during the course of the trial. (Transcript, pp. 1065-1093). In the course of that testimony, plaintiff Redfern testified that her major source of income is from the Department of Social Services of Nassau County. She received $191.00 per month for basic needs. She also testified that Social Services was paying for the rent on her home. Plaintiff Redfern further testified that she received an additional $65.00 per month in support payments.

5. On January 31, 1974, I spoke to plaintiff Redfern by telephone who advised me that her sources of income remain the same and she continues to receive public assistance. The only change in her status is that the rental on her home has increased to $325.00 per month, which is above the maximum that Social Services will pay, and plaintiff Redfern is obligated to cover approximately $13.00 of her rent from her public assistance payments. Plaintiff Redfern further advised me that she desires to appeal from the decision rendered by the District Court and that because of her poverty she is unable to pay the cost of an appeal in this matter or to give security therefor, and that she believes that she is entitled to redress. Plaintiff Redfern also told me that she is unemployed and that she has been unemployed for many years. Further, she told me that she has receivedno income from any business, profession or other form of self-employment, nor in the form of any rent payments, interest dividend or other source. Plaintiff Redfern also informed me that she owns no savings or checking account and that she owns no notes, real estate, stocks or bonds. Plaintiff Redfern further informed me that she owns no

automobiles nor other valuable property, excepting ordinary household furnishings and clothing. Finally, plaintiff Redfern informed me that with the exception of the support payments listed above, her four children are solely dependent upon her for support. Those children are Deborah, age 9 1/2, Antoinette, age 7 1/2, Charles, age 6 1/2, and Geraldine, age 1 1/2. Plaintiff Redfern is prepared to submit an affidavit setting forth these facts if the Court so desires.

6. None of the plaintiffs in this action have any source of money available for the processing of an appeal in this case, and the low-income minority/and the class they represent clearly plaintiffs qualify to proceed with this appeal in forma pauperis, pursuant to 28 U.S.C. 1915 and Rule 24 F.R.A.P. In fact, plaintiffs found it necessary during the course of the trial to secure a copy of the daily transcript which the defendants had requested from the court reporter, but due to the lack of financial resources, the plaintiffs, to date, have been unable to make payment to the court reporter for the cost of that transcript ($1,500.00).

7. The plaintiffs' primary purpose in filing this action was to challenge the decision by Nassau County officials to block the construction of low-cost housing units at Mitchel Field and to challenge the determination by defendant, General Services Administration, to locate a federal installation at Mitchel Field without having made satisfactory provision for the housing of low-income workers. This Court has now refused to afford the plaintiffs the relief they seek and plaintiffs now find it essential to appeal this case to the Court of Appeals for the Second Circuit.

Richard J Bellman

RICHARD F. BELLMAN

Sworn to before me this 31st day of January, 1974.

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Nina Geronimo

NINA GERONIMO
Notary Public, State of New York
No. 41-1413900
Qualified in Rockland County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABDON ACEVEDO, et al., Plaintiffs, -against- NASSAU COUNTY, et al., Defendants.	72 Civ. 305 (MAC) PLAINTIFFS' AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

STATE OF NEW YORK)
: ss.:
COUNTY OF NASSAU)

BETTY ANN REDERN, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case and now file this affidavit in support of the motion by myself and the class I represent, for leave to appeal in forma pauperis.

2. I am a low income, black resident of Nassau County, New York. Because of my low-income status, I am eligible for residency in housing built under federal and state low-income housing programs. As such, I represent the "class of all Blacks or Spanish-speaking persons residing or seeking to reside in the County of Nassau who are eligible for low-income housing as defined in state or federal statutes and regulations." Memorandum opinion, pp. 2-3.

3. The major source of my income is public assistance from whom I receive $191.00 a month for basic needs and part of the rent on my home. In addition, I receive $65.00 per month in support payments for one of my four children.

4. The rental payment on my home is $325.00 per month,

approximately $33.00 of which I pay out of my public assistance payment. I am currently unemployed and have been unemployed for several years. I receive no income from any business, profession, or other form of self-employment, nor do I receive any income from rent payments, dividends or any other source. I have no checking account or savings account and I own no stocks, bonds, notes or real estate.

5. I own no automobile or other valuable property except for ordinary household funishings and clothing.

6. Except for the support payments noted above, I am solely responsible for the support of my four children, Deborah, age 9 1/2; Antoinette, age 7 1/2; Charles, age 6 1/2; and Geraldine, age 1 1/2.

7. I wish to appeal from the decision entered by the District Court on January 30, 1974 which denied me the relief I sought in the above-entitled action. I have no money available to process an appeal or to pay for the transcript secured from the court reporter during the course of the trial in this action.

8. I challenged, by the above-entitled action, the decision of Nassau County officials to block the construction of low-cost housing units at Mitchel Field and the determination by the General Services Administration to locate a federal installation at Mitchel Field without having made satisfactory provision for the housing of low-income workers. In order to secure my constitutional rights, I now find it essential to appeal the District Court's decision to the United States Court of Appeals for the Second Circuit.

Betty Ann Redfern
BETTY ANN REDFERN

Sworn to before me this
7 day of February, 1974.

LEONARD - CLARK
No. 60
NOTARY PUB. of New York
Qualified in Nassau County
Term expires March 30, 19__

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ALDON ACEVEDO, et al., Plaintiffs, -against- NASSAU COUNTY, et al., Defendants.	72 Civ. 305 (MAC) AFFIDAVIT OF KENNETH R. MURPHY IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

STATE OF NEW YORK)
: ss.:
COUNTY OF NASSAU)

KENNETH R. MURPHY, being duly sworn, deposes and says:

1. Until the beginning of February, 1974 I served as Director of the Long Island Region of the National Association for the Advancement of Colored People (hereinafter referred to as L.I-NAACP), a plaintiff in the above-titled lawsuit. I currently am serving as Chairman of the Housing Committee for the L.I.-NAACP. I reside at 53 Lafayette Street, Huntington, New York.

2. I file this affidavit in support of plaintiffs' application for leave to appeal in forma pauperis. The L.I.-NAACP is an organization comprised of volunteer members. Its membership comes from Nassau and Suffolk Counties. The L.I.- NAACP maintains no permanent staff and has no permanent offices. All of the organization's work is done out of the homes of the individual members. The organization has no authority to tax its membership or to collect dues from them. The L.I.- NAACP has provided no monies to support the above-titled litigation and has no financial resources to contribute to this case.

3. The total resources of the L.I.- NAACP currently is

approximately $50.00. This money was collected in order to support a recently initiated newsletter entitled, "The Bellweather". Only one issue has so far been prepared and mailed to the membership, and the $50.00 we currently have in our treasury is insufficient to cover the expenses of the next edition, if and when we are in a position to publish it. L.I.- NAACP has no income from any business, profession or services, nor does it receive any income from rent payments, dividends or any other source. It has no checking account or savings account and owns no stock, bonds, notes or real estate.

4. The L.I.-NAACP joined in this lawsuit as a plaintiff in order to challenge, on behalf of its membership, most of whom are low-income and minority citizens, the decision of Nassau County officials to block the construction of low-cost housing units at Mitchel Field. It also joined, on behalf of its membership, to challenge the determination by General Services Administration to locate a federal installation at Mitchel Field without having made provision for the housing of low-income workers.

5. The L.I.-NAACP wishes to appeal from the decision entered by the District Court on January 30, 1974, dismissing plaintiffs' action. It has no money available to process an appeal or to pay for the transcript secured from the court reporter at the time of trial. The L.I.-NAACP believes it is essential that it be permitted to appeal this case on behalf of its membership and the class it represents in this action to the United States Court of Appeals for the Second Circuit.

KENNETH R. MURPHY

Sworn to before me this
7TH day of February, 1974.

ARTHUR W. WIEGAND
NOTARY PUBLIC, State of New York
No. 30-5551750
Qualified in Nassau County
Commission Expires March 30, 1974

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABDON ACEVEDO, et al., Plaintiffs, -against- NASSAU COUNTY, et al., Defendants.	72 Civ. 305 (MAC) AFFIDAVIT OF ALICE PERLMAN IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

ALICE PERLMAN, being duly sworn, deposes and says:

1. I am one of three co-chairman of the Baldwin Council for Human Rights (hereinafter referred to as the Baldwin Council), a plaintiff in the above-titled lawsuit. I have been a member of the Baldwin Council since it was formed in 1963 to assist minority citizens to find housing in Nassau County.

2. I file this affidavit in support of plaintiffs' application for leave to appeal in forma pauperis. The Baldwin Council is an organization comprised of approximately 50 families. Its membership comes largely from the community of Baldwin in Nassau County. The Baldwin Council maintains no permanent staff and has no permanent offices. All of the organization's work is done out of the homes of the individual members. The organization has no authority to tax its membership or to collect dues from them. The Baldwin Council has provided no monies to support the above-titled litigation and has no financial resources to contribute to this case.

3. The total resources of the Baldwin Council currently is less than $100.00. This money was collected in order to pay

for organization mailings. Baldwin Council has no income from any business, profession or services, nor does it receive any income from rent payments, dividends or any other source. It has no checking account or savings account and owns no stock, bonds, notes or real estate.

4. The Baldwin Council joined in this lawsuit as a plaintiff in order to challenge, on behalf of its membership, the decision of Nassau County officials to block the construction of low-cost housing units at Mitchel Field. It also joined, on behalf of its membership, to challenge the determination by General Services Administration to locate a federal installation at Mitchel Field without having made provision for the housing of low-income workers.

5. The Baldwin Council wishes to appeal from the decision entered by the District Court on January 30, 1974, dismissing plaintiffs' action. It has no money available to process an appeal or to pay for the transcript secured from the court reporter at the time of trial. The Baldwin Council believes it is essential that it be permitted to appeal this case on behalf of its membership and the class it represents in this action to the United States Court of Appeals for the Second Circuit.

Alice Perlman

ALICE PERLMAN

Sworn to before me this

12 day of February, 1974.

[illegible]

[illegible]

[illegible] 3/30/75

[illegible]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ABDON ACEVEDO, et al, Plaintiffs, -against- NASSAU COUNTY, et al., Defendants.	72 Civ. 305 (MAC) O R D E R

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED that the plaintiffs in the above-titled action are granted leave to appeal in forma pauperis. The costs of this appeal shall be paid by the United States.

MARK A. COSTANTINO
JUDGE OF THE ABOVE ENTITLED
UNITED STATES DISTRICT COURT

Dated: February 15, 1974.

SELECTED PORTIONS OF TRIAL TRANSCRIPT*

Hearings before Federal District

Judge Mark A. Costantino

June and July, 1973

*Numbers at upper right-hand corner are pagenation from original transcript.

AM R2

ARTHUR KUNZ, a witness called herein, was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. DELLMAN:

Q Mr. Kunz, where do you reside?

A 6 Cresthill Place, Smithtown, New York.

Q How long have you resided in Suffolk County?

A Since 1960.

Q Prior to that, did you live in Nassau County?

A That is correct, for twenty-five years.

Q Where in Nassau County did you live?

A Jericho, Hicksville, Hempstead, Floral Park.

Q Mr. Kunz, where are you employed?

A By the Nassau-Suffolk Regional Planning Board and Suffolk County Planning Board.

Q What is your position with the Nassau-Suffolk Bi-County Planning Board?

A Planning Coordinator.

Q Did you say you are employed also by the Suffolk County Planning Commission?

A Yes.

Q What is your position?

A Assistant Director.

Q How long have you been associated with the

Suffolk Planning Commission?

A Since 1969.

Q Prior to coming with the Bi-County Planning Commission, what jobs did you hold?

A Assistant to the Director of the Nassau County Planning Commission.

Q How long were you employed by the Nassau County Planning Commission?

A From 1958 to 1969.

Q What is your educational background?

A I have a Bachelor in Building Design and Master's in Architecture from the Virginia Polytechnical Institute and State University.

Q Are you a member of any professional associations?

A Yes, I am a full member of the American Institute Planners, and past President of the New York Chapter, and also a member of the American Society of Planning Officials.

MR. JASPAN: We do not challenge his qualifications.

THE COURT: All right, he is qualified.

Q Have you taught at any university?

THE COURT: He is qualified. Get on to whatever he is going to testify to.

Q Mr. Kunz, what are the functions and responsibilities of the Bi-County Planning Commission?

A The primary function was to create a comprehensive plan for Nassau and Suffolk Counties.

Q When was the Commission established?

A 1965.

Q Could you tell the Court how the Bi-County Planning Commission came into existence?

A Because Nassau and Suffolk Counties realized, to be eligible for federal funds they must work as a cooperative. The two-county Board of Supervisors at that time formed a joint group.

Q And funds were provided by both the County governments?

A That is correct.

Q Were funds obtained for the purposes of developing a Master Plan from the Federal Government?

A That is correct.

Q Could you tell the Court how much money the Federal Government provided to the Bi-County Commission?

A Approximately one million dollars between 1966 and 1970, which was the period of the plan.

Q The Bi-County Commission has continued to exist since the issuance of the plan?

A Yes.

Q Does the funding come from the two counties?

A That is correct, at the present time.

Q The money for the development of the plan from the federal government, under what program did you receive that?

A Section 701 of the Housing Act as amended.

Q What does 701 deal with?

A Comprehensive planning for transportation, land use, population control, environmental control, facilities, and so on.

Q What is the relationship between the Bi-County Planning Commission and the two County planning commissions?

A The Bi-County Planning Agency is primarily the agency to look at things on the regional scale; the two county agencies then take the development at the regional level and attempt to implement the elements of the Commission, so there is a direct relationship to the issues that are beyond the borders of the two counties.

Q It is true, is it not, that the two Planning Commissions provide personnel to the Bi-County Planning Commission?

A They have always provided them because the federal funding is not always consistent from year to year. The

staff has to be an ongoing staff and the Regional Board has the ability to draw upon the staff of either agency.

I at one time was paid by Nassau County and now paid by Suffolk County. That is how it works out.

Q Who is the Director of the Bi-County Commission?

A Lee E. Koppelman.

Q Do you work with Mr. Koppelman?

A Yes, I do.

Q When was the Bi-County plan contemplated?

A Summer of 1970.

Q Could you tell the Court what your role was with respect to preparing that plan?

A As the planning coordinate, I was concerned with the staging of the various projects that went into the plan and making sure all the work was coordinated in each element we had discussed in the two different offices and four separate consultants work -- I was involved in all the phases of the work.

Q How large a staff did the Bi-County have at the time it was --

A At the peak time, over fifty employees.

Q As Planning Coordinator, did you have responsibility over these employees?

A Just about.

Q Can you tell the Court what the Bi-County plan

is and what its purposes are?

A The purposes are to really look at all of Long Island as a total entity rather than the individual 110 municipalities that exist, and come up with a set of goals and objectives for the Island as a whole. The regional plan is designed to be a very broad scale development pattern and it is designed to allow local municipalities to make decisions in the framework of an overall plan, something that never existed before on Long Island.

Q How did the Bi-County Commission proceed and prepare the Bi-County Plan?

A They proceeded to hire staff and hire consultants for each element of the overall plan and make presentations to the Bi-County Commission on a monthly or bi-monthly basis as each stage of the work was completed.

Q You said there were various elements to the work. Could you explain that further? Would you --

A The elements in this case would be transportation, housing, land use, population, economic development, utility needs, recreational needs.

Q How many separate back-up studies were there for the plan?

A Approximately twenty-five back-up volumes that go into the back-up plan. They started to be released as early

as 1966 and continued through 1970.

Q Was there a final Bi-County plan published?

A The summary was published in a form that was to be made available to aswide a distribution as possible. The summary was used as a composite of the twenty-five separate volumes. The twenty-five were never put into one edition.

Q Mr. Kunz, I show you a copy of a document called: "Nassau-Suffolk Comprehensive Development Plan Summary."

Are you familiar with that document?

A That is the summary I referred to.

Q This was published by your agency as the summary of the comprehensive plan?

A. That is correct.

MR. BELLMAN: We would like to have this document marked as Plaintiff's Exhibit 1 and move its admission into evidence.

THE COURT: Mark it.

THE CLERK: Nassau-Suffolk Comprehensive Development Plan marked in evidence as Plaintiff's Exhibit 1.

MR. BELLMAN: Has it been accepted, your Honor?

THE COURT: Yes.

Q Was this plan as prepared by the Staff adopted by the Planning Commission itself?

A It was adopted by the Nassau-Suffolk Regional Planning Board and it was also adopted by the Nassau and Suffolk Counties Planning Commission and Suffolk County Legislature.

Q I take it it was not adopted by the Nassau County Legislature?

A That is correct.

Q Did the matter come before that body?

A Not officially.

Q Were all the back make-up reports that went into the twenty-five volumes -- were they also adopted by the Bi-County Commission Board?

A Not necessarily adopted, they were all approved for distribution as each one was made available.

THE COURT: We will take a five-minute recess at this point.

Step down for a moment.

(Recess taken.)

(continued next page)

M/dl
4/1

Q Mr. Kunz, I would like to refer to Plaintiff's Exhibit 1. It is before you.

Could you tell the Court how the bi-county commission proceeded with respect to setting forth its summary of findings.

A The summary of findings was a composite of all of the study reports leading up to the overall development plan.

For example on availability facilities, water supply and need for sewage, we determined an optimum population for the county area, the bi-county area, and attempted to adopt the needs for the pilot.

In addition we studied the transportation network, the inadequacies of it and the need for a variety of transportation.

THE COURT: Is that for the entire county?

THE WITNESS: Both counties.

THE COURT: Does any testimony refer to this area where we are talking about here?

THE WITNESS: Yes, the transportation network was a special study because it is a higher denisty area at the time the survey work was done, and this is an area for significance.

THE COURT: Was that the time the field was being used for the Air Force?

THE WITNESS: No. It was started all ready. It had started to be developed. Hofstra University existed then and a number of other pieces were there also.

THE COURT: Was there any consideration being given for housing as far as the transit was concerned?

THE WITNESS: Yes.

The transportation would relate to the housing and other facilities in that same portion of Nassau County.

The comprehensive plan reflects the variety of need, the various needs for the housing and of course the transportation network to serve that area.

Q Did the bi-county commission set forth any priorities in its summary report for the two county areas?

A Priorities were for a development pattern where the major central portion of the island is developed more intensively than the eastern and northern and southern shores.

The central spine should be the maximum location for new housing, higher density units for job opportunities. In other words to better serve that portion of the county where you have the east west road system and the railroad in the

middle of the island.

Q Would the Mitchell Field area be within that central core area?

A Yes.

Q Turn to the section called priorities in the summary, Plaintiff's Exhibit 1.

It is true that that section sets forth the two higher priorities, one being the need for parks in the Nassau County area and the second for housing.

Could you explain those priorities?

A Since Nassau County was recognized as having less than seven percent of its land vacant in our 1966 land survey, we then found right after that that there was a greater deficiency, approximately 11,000 units of recreational space and also a deficiency of 60,000 multi-family housing units that we found those two uses should be considered before anything else.

That is where those two priorities came from.

If there were pieces that could be used for park purposes and could be used for multi-familty housing units, those should be used in lieu of using the site for single family homes or commercial or industrial development.

Q Under projections, the bi-county commission stated that the emphasis on the provision of new housing must

shift away from single family housing toward town houses and apartments.

Does that relate to the pressure in terms of using up the land and the lack of available space for the development of single family homes?

A Primarily yes, and also because of the changing needs of the population.

The County as it grows will need a greater variety of housing than existed at the time the plan was developed.

In other words, more need for multi-family housing units, ten units, which have been constructed.

The plan also specifically has a section where you specifically deal with the issue of housing; is that correct?

A Yes.

Q Could you tell the Court what the bi-county majority concerns were with respect to housing as set forth in this discussion?

A The basic recommendation of the housing section of the regional planning board was to provide sound adequate housing for all the residents of Nassau and Suffolk counties.

In other words, we did not attempt to solve the housing problems of the region but we felt that all people that presently lived in the two counties were entitled to

have sound housing.

We identified those who lived in substandard housing, deteriorated or delapidated or overcrowded or some other way deficient and set up the priorities in the housing section to provide either new or rehabilitated units for those people.

Q How did the bi-county commission proceed to identify those persons who were living in substandard or deficient housing?

A Primarily the units were identified. Everything is done on a unit basis but the unit survey that had people living in them were done from extensive field studies and other surveys from social services departments and from other agencies, from mail service, from field surveys; but all of the housing from the New York City line up to Montauk Point was surveyed from the exterior and samples of the housing on the interior were then made to determine the condition and the occupancy of the people at that time.

Q Did you determine -- well, did you personally take part in any of these studies?

A Yes. The housing work was done by our administrative staff because housing is a difficult issue in a suburban area, so we felt it had to be done with extreme care.

This was not parceled out to teams of people or

consultants.

It was done primarily in the house.

Q There is a section entitled publically assisted housing.

In that section bi-county commission, it sets forth certain figures as goals for each, for particular towns and communities on Long Island.

Could you explain to the Court what the purpose was in setting forth these figures and how you went about determining the numbers?

A The purpose of setting forth numbers for each of the towns was to give them some idea of the responsbility that each one had since the counties do not build housing, and we felt that initially we broke the numbers down only on a county basis and there was a significant amount of requests from towns that were within that housing area as to how much housing was necessary within that community.

This did not mean that they were going to solve the problem but wanted to know their responsibilities.

We broke the total number of public and publically assisted units down on a town basis.

Q What do the numbers reflect?

A A current need.

This is people who lived in substandard and overcrowded

units that are presently in that particular line.

They attempted to allocate the numbers by town, on a town basis.

Q I would like to have you read into the record the various figures set forth in the plan for Nassau County.

A The total number of public and publically assisted units were 15,300 total in the county.

The town of Hempstead's figure which includes Long Beach was 10,400 units. The town of North Hempstead is 2,000 units and the town of Oyster Bay, including the City of Glen Cove, 2,900.

Q When you say publically and publically assisted housing, what does the commission mean?

A Below market rate permanently.

Q Units under subsidized programs such as public housing or 236 program?

A Yes. They could be under a number of different Federal or State programs. They have to be on a low market value. It didn't mean they must be all publically owned.

Q What were the commission's findings with respect to multi-family housing generally in Nassau County?

A Generally in both Nassau and Suffolk we found there would be a need for the next 15 years for over 60,000 multi-family units in each of the counties.

* * *

THE COURT: All right, continue.

BY MR. BELLMAN:

Q Mr. Kunz, before lunch we were discussing the housing need as allocated by the bi-county commission in its summary report.

Could you tell me, was this housing need a need which envisioned housing for the people in the inner city of New York or simply people from Nassau County?

A Simply people who live in Nassau or Suffolk.

Q The report also talks about a Phase Two or some later need, could you explain that?

A A later need would be determined after the initial housing was provided for those people living in substandard or overcrowded units at the present time.

Q And that was tied to the development of employment opportunities, is that correct?

A That would be at a later date, yes.

Q What communities specifically, or areas specifically within the town of Hempstead show the greatest housing problem?

A Inwood, Roosevelt, Hempstead, Freeport, Elmont and the City of Long Beach if you consider that as part of that area geographically.

Q Outside of the town of Hempstead where were the deteriorated housing located, say, in Oyster Bay?

A In Oyster Bay community and somewhat around Hicksville a little bit in the West Amityville area, and of course in the city of Glen Cove.

Q What about the town of North Hempstead?

A Primarily in New Castle, around PORt Washington, Spinning Hill area of Great Neck.

Q What percentage of the housing needs of the bi-county allocated for its publically assisted housing would have involved a housing need for senior citizens?

A We didn't break the figures down in the document completely as senior citizens because we just included an overall need.

But senior citizens range somewhere between one-third and one-half of the total need.

Q In the introduction to the plan it states "although the vast majority of residents live in sound houses, housing problems exist for blacks, Puerto Ricans and Indians, for welfare clients and migrant workers, for the young, the aged and the large family of moderate income."

Did the commission determine what percentage of the housing need was confronted by persons of minority status?

A Roughly half of the -- more than half of the overall housing problem is for whites, not non-whites, but of the

whites -- I'm sorry, the non-whites, we found a much greater proportion in numbers lived in substandard housing units.

They represent only five percent of the population and upwards of a half of them living in poor housing conditions.

Q You stated that over half of the white or non-white population?

A Over half of the total population that needs some type of housing relief are white, because the predominance of people living in Nassau County, 95 percent are white.

Q Were these communities you listed, Long Beach, Freeport, Hempstead Village, Roosevelt, Inwood and Elmont, those are the communities in Hempstead which show the greatest problems, which of these communities have a concentration of racial minorities?

A All really, except for Long Beach. Their concentration will be quite small in comparison to their total number of elderly and poor whites.

Q With respect to the areas of the town of Oyster Bay, which of those areas that you designated have a large concentration of minority citizens?

A All but Hicksville.

Q And with respect to North Hempstead, which have a large concentration of minorities?

A All but the Port Washington area.

Q After the issuance of the report, what work did the bi-county commission undertake?

A In other words, you mean to sell the idea of the housing --

Q What has been your work product since the issuance of the report?

A Since the issuance of the plan, it is primarily to obtain as much implementation as possible through Government action or private action.

In other words, encouraging private developers to make their decisions in accordance with the overall plan and to foster those public actions which will implement various sections of the plan so that we spend most of our time explaining the issues of the plan to interested civic groups or governmental groups and at the same time attempting to recommend that specific funding takes place that will implement projects in the plan.

Q I show you a copy of a report entitled Housing Better Homes for Better Communities. It is a publication put out by the regional planning board.

Can you tell me what that document is?

A This is the summary of about three years of housing analysis work. This was the so-called popular version of the housing recommendations for Long Island.

This delineates the findings of the housing problems and the summation of all the recommendations that were made to deal with the housing problems.

Q And this was issued by your agency?

A That's correct.

Q Did you participate in the preparation of this document?

A Yes, I did.

Q I would like to have this marked as Plaintiff's Exhibit Two.

MR. JASPAN: You are just marking it for identification?

MR. BELLMAN: Yes.

THE CLERK: Document marked for identification as Plaintiff's Exhibit Two.

(So marked.)

MR. BELLMAN: Plaintiff's would like this admitted in evidence.

MR. JASPAN: If your Honor pleases, much of what is being submitted relates to a great many matters which do not concern the development of one small parcel of property, Mitchell Field, and I am suggesting respectfully that the offers be limited to those matters which concern Mitchell Field.

* * *

MR. BELLMAN: We move the admission of these documents.

MR. JASPAN: I have no objection to the documents as such, and as I said, this is going to open the door to a wide area of questioning because he now has a document he is going to question him about.

THE CLERK: So marked.

(So marked.)

BY MR. BELLMAN:

Q Mr. Kunz, would you state to the Court what the major findings were by the Bi-County Commission with respect to population growth in Nassau County as set forth in your volume 1 on population development?

MR. JASPAN: May we know for what period and for what areas?

I object to the question, it is too broad.

THE COURT: Maybe we can get a broad question and we won't need any other questions on it.

MR. BELLMAN: Excuse me?

MR. JASPAN: Sin begets sin, and that is what is going to happen here.

THE COURT: I don't know. I don't even know who said that.

MR. JASPAN: I borrowed it from somebody.

THE COURT: Go ahead.

A It indicates the growth rate in Nassau County was less than 10 percent in the last decade, 1960 to 1970, and that there actually were some losses occurring in western Nassau County at the present time.

THE COURT: People moving out?

THE WITNESS: Children moving out, families remaining there. So that the --

THE COURT: Children moving out and families remaining there?

THE WITNESS: Their parents remaining there.

THE COURT: That doesn't make it different from other communities.

THE WITNESS: It is an example of a maturing.

THE COURT: The next decade we are liable to find families moving out and children moving in.

THE WITNESS: It hasn't happened at the present time.

THE COURT: It may.

Q On page 4 of this report you note that the county is nearing saturation in terms of population, is that correct?

A That's correct.

Q And what do you mean by that?

A Saturation is when virtually all of the available buildable land is totally occupied, according to the Department of Zoning.

Q Would you take the volume 2 --

THE COURT: What was that? 1960 and 1970?

MR. BELLMAN: Yes.

All of these are based on 1970 census figures, your Honor.

THE COURT: According to whatever this, Exhibit 1, according to Exhibit 1 you have Nassau population growing to 1985 of 1.6 million.

THE WITNESS: That's correct. That would be saturation.

THE COURT: That would be saturation.

THE WITNESS: Right now it is 1.4, so it is approaching saturation.

THE COURT: I thought that would be in addition to the 1.5 you have in 1970.

THE WITNESS: No. The ultimate saturation of the county is around 1.6. That is all the land will sustain at the present time.

THE COURT: So you have how many million to go?

THE WITNESS: 200,000 to go.

THE COURT: So we are not fighting about very much then?

THE WITNESS: Very small amount.

THE COURT: Where do we put these people after they get there?

THE WITNESS: 200,000 --

THE COURT: That's why it is not going to take six weeks. Lawsuits sound very good when you start them, but as you start trying them, somehow or other they lose their effect.

MR. JASPAN: I could foresee the possibility of a much shorter trial, but I have not made my motion yet.

THE COURT: I wouldn't say that would help. Go ahead.

BY MR. BELLMAN:

Q Volume two on the census data deals with color and race, is that correct?

A That's correct.

Q Could you tell me, was this volume prepared in your office?

A Yes, it was.

Q And what is the purpose of this document?

A The purpose of this one is to indicate where the concentrations of racial minorities exist within the County at the present time.

Q And is the information in this document based solely on the 1970 census and 1960 census?

A '60 and '70.

MR. BELLMAN: Your Honor, we would like to have this marked as Plaintiff's Exhibit 4 for Identification.

MR. JASPAN: I have no objection, but I still have a reservation referred to before.

THE COURT: Mark it.

THE CLERK: Document marked for identification as Plaintiff's Exhibit 4.

(So marked.)

MR. BELLMAN: We move its submission into evidence.

Is it accepted, your Honor?

THE COURT: Yes.

THE CLERK: Plaintiff's Exhibit 4 previously marked for Identification marked in Evidence. Plaintiff's Exhibit 3 was marked before.

(So marked.)

Q What is the overall Black percentage of the population in Nassau County, Mr. Kunz?

MR. JASPAN: I didn't hear that question.

Q The overall Black percentage of the population in Nassau County?

A Just under five percent, I think 4.7 percent.

Q And what was the figure in 1960?

A Just about the same, hardly changed. Went up just slightly.

Q Now, on page 17 -- I will give you this copy-- of Plaintiff's Exhibit 4, it is stated that between 1960 and --

THE COURT: How can you increase that any more if he just said that 200,000 is going to be the maximum number of people who are going to come in, and you only have four percent in 1960 and you still only four percent, the most you can go up is another percent?

MR. BELLMAN: We are not necessarily

even talking about going up --

THE COURT: Let's talk about anybody then, Black, white, blue, pink, it makes no difference, but how can you go up more than one percent?

MR. BELLMAN: Those minorities citizens living in the county right now are going to be able to stay there and have decent housing, that's what this is about.

THE COURT: It seems to me it is questionable whether anybody will stay there and have decent housing, never mind the minorities.

I am just taking the evidence as it comes in at this point.

MR. JASPAN: Is Mr. Bellman narrowing the case down, because he now says he is worrying about the citizens of Nassau County?

His prayer for relief is for the people who live outside of the county and would like to come.

THE COURT: Your class in this action is supposed to encompass people not only within the county but people outside the county, and one of the reasons I permitted you to advertise in the Amsterdam News was

for that purpose. If there is no room to bring them in and there is nobody going out, I don't know what we will do with them, they will cause some kind a problem.

MR. JASPAN: I just want to know whether the case has been narrowed down.

THE COURT: I understand the case. Go ahead. I am getting to it now.

MR. JASPAN: The Judge is ahead of me. I am not always sure of their position.

THE COURT: I am not ahead of you, I just understand.

BY MR. BELLMAN:

Q On page 17 it states, "That between 1960 and 1970, the pattern of Negro settlement became one of increasing concentration in those communities that had substantial number of Negro residents at the beginning of the decade."

Could you explain what that statement means?

A In other words, these are areas that had large Black percentages before and in the last decade they increased the amount Black percentage in each one.

In other words, the Black increase in population occurred in the same areas that had Black concentrations in earlier years.

Q Could you state which communities show the greatest increase of Black concentration over the decade?

A From --

MR. JASPAN: If your Honor please, I don't think that is relevant to this issue.

THE COURT: I would like to hear the answer to it. The last answer I didn't understand so I would like to find out what the answer is. Go ahead.

I don't know how anybody can determine sociological problems of people, but if they can, I would like to know the answer to it.

A From the following chart I think you will see the community there that are listed that have the largest amount of Negro population.

Q That is on page 18?

A Page 18, Table 10.

THE COURT: Is it your position that these statistics you have, where you have the heavy Negro population, if you have low-cost housing someplace else that they will move from there and go to the other place?

Sociologically that is not true, but if you tell me so I will accept your word.

I don't know where you get your background from, but I have found that to be completely untrue. I think Harlem is the best example of that.

THE WITNESS: These figures primarily show, your Honor, that the amount of Black increase occurred in only those communities that were -- that had a large Black population before; I think that is the point.

THE COURT: That is the only reason for it. All right.

THE WITNESS: In other words, the Black -- increase in Black population has not been spread equally throughout Nassau County. It is in very constrainged areas.

Q Now, there is a map attached to this report, is there not, which shows, illustrates the concentration of the minority population throughout Nassau County; is that right?

A Correct.

Q And could you explain to the Court what that map shows?

A The map shows by dots where the Black population exists.

Q And its concentration, is that correct?

A And its concentration.

Q On Plaintiff's Exhibit 2, on this map, could you draw in where Mitchell Field is located?

A (Witness complies.)

Q Would you label it Mitchell Field.

MR. JASPAN: Your Honor, please, if it would be helpful to the Court, we have a rather blown up picture of that same map.

Since we will be referring to these things, you might want to mark that.

Q Mr. Kunz, could you step over here and perhaps we should have this marked -- perhaps we should mark this as your exhibit -- why don't we call it Plaintiff's Exhibit 5.

THE CLERK: So marked.

(So marked.)

Q If you can draw in Mitchell Field and mark it as such.

A (Witness complies.)

(Continued on next page.)

* * *

want to first show the racial makeup of the community. We can only build our case one step at a time.

MR. JASPAN: He is proposing an inherent bias in all white people, which I do not accept. There are other aspects of this problem which he has not touched and he probably won't.

THE COURT: I will allow it.

A One point three percent Negro.

Q One point three?

A One point three percent black.

Q What is the population of the Uniondale area which also borders on Mitchell Field, the black percentage of the population?

A Eight point seven.

Q What about Garden City?

A One point three.

MR. JASPAN: If your Honor please, may I ask as of what date this figure --

THE WITNESS: Seventy, April 1, 1970.

MR. JASPAN: I know that is not the Uniondale figure today.

MR. BELLMAN: You can introduce any figure you want.

* * *

to the point.

Q WIth respect to Plaintiff's Exhibit 6, on pages 9 and 10 there are some charts, are there not, which dramatize what you had just said with respect to the aging of the Nassau population.

On page 9, could you explain how those bars indicate what you have just stated?

A The bars indicate a total increase in population in the upper age groups and into the categories of teenagers, but they show a total loss in the preschoolers and the categories of people running from 30 to 40 years old.

Q Does the census information show where the persons in this middle age population are moving?

A If you look on the next page there is a significant increase in those categories in Suffolk County.

Q So that there is an indication that --

A A shift of younger families in the home buying age period moving from Nassau to Suffolk County.

Q What in your opinion counts for this movement?

MR. JASPAN: I object, if your Honor pleases.

THE COURT: Sustained. It has nothing to do with what we are talking about.

MR. BELLMAN: Your Honor, I think it does,

161a * * *

MR. BELLMAN: I would like to turn to the next volume. Volume four deals with housing inventory.

Q Could you tell me what the Commission's purpose was with respect to Volume four?

A Primarily to document the mixture of housing.

In other words, single families, multiple families, owner occupied, and the vacancy rate and the primary funding in this vacancy rate in Nassau County is less than 1% which is the slowest in the Metropolitan area.

MR. BELLMAN: Your Honor, we would like to have this marked as plaintiff's exhibit 7.

THE COURT: All right. That can be marked.

THE CLERK: Document marked for identification as plaintiff's exhibit 7.

MR. BELLMAN: We would like to have it admitted into evidence.

THE CLERK: Plaintiff's exhibit 7 previously marked for identification marked in evidence.

Q Could you tell the Court on what page the discussion with respect to vacancy rate in Nassau County appears?

MR. JASPAN: Your Honor, if your Honor pleases, the witness testified that there is a

1% vacancy rate. I don't know why we have to document that. That is his testimony.

THE COURT: That's what he said.

THE WITNESS: Page 19.

Q Page what?

A 19.

Q Thank you.

THE COURT: All right.

Q Volume 6 deals with income.

Could you state what the purpose was with respect to Volume 6? The preparation of Volume 6.

A To pinpoint the areas of income variations from the median. Nassau being an extremely highly richer county had pockets of poverty areas and it was attempted to point out where these were located and of course with the correlation between this and Volume 2, low income areas, being related to the racial minority areas.

Q Did you also find there was a correlation between low income racial minorities and where the housing problems existed?

MR. JASPAN: Your Honor, he hasn't introduced this one into evidence and he is asking questions on it.

The testimony has been that there are

many white people in the disadvantaged areas as well as black people --

MR. BELLMAN: This is Volume 6, I would like it marked.

THE CLERK: Document marked for identification as plaintiff's exhibit 8.

MR. BELLMAN: And I would like to move its admission into evidence.

THE CLERK: Plaintiff's exhibit 8 previously marked for identification marked in evidence.

MR. BELLMAN: Thank you.

BY MR. BELLMAN:

Q There is a map, is there not, in Volume 6 that also shows the concentration of poverty, is that correct?

A That is correct.

Q Your volume on housing territory, does that deal in any way with the cost of housing in Nassau County?

A No, that material has not been put together in a volume like these (indicating).

Q Do you have any information on the cost of housing in Nassau County, the median sales price --

MR. JASPAN: I object. That is not relevant to this issue.

THE COURT: I will allow it.

A The median value of an owner occupied unit in Nassau County was increased from $18,000 in 1960 to $30,200 in 1970.

Q How does the Nassau median cost of a single unit home compare with the home in other counties in the New York Metropolitan area?

MR. JASPAN: I object to this. I don't see any relevancy to that.

THE COURT: I don't know. Do you know to that comparison?

THE WITNESS: Just under which is about the highest in the state within New York State.

Q In other words, it is the second highest in the State of New York?

A Yes.

Q Do you have any information on the median rental for units in Nassau County?

A They also increased from $106 to $159 in 1970.

Q Is there a so called rule of thumb with respect to what a person should be earning to purchase a home that cost over $30,000?

A Usually you get a mortgage twice your annual income.

Q For a median cost home in Nassau County, you should be earning over $15,000 a year, is that the basic rule?

A Pretty close.

MR. JASPAN: I think he said you can get a mortgage twice your earnings.

THE COURT: That's what he said. And I know what he said.

Q What is the cost of new apartments generally in Nassau County?

A Typical one bedroom apartments at the present time are from -- not from documented figures here, from newspaper ads, around $250.

Q I missed that.

A About $250.

Q For one bedroom?

A Yes.

Q What is the cost --

A That is minimum.

Q -- for two and three bedroom new apartments in Nassau County?

A In the range of $350, 400.

Q Now, have you had some involvement with respect to the planning of Mitchell Field?

A Yes, I have.

Q Could you trace for the Court what your first involvement was with the Mitchell Field area?

A I worked for the County from '58, but it was declared

surplus in 1961, and one of the first projects was to investigate the feasibility of retaining the airport as a general aviation operation in 1961.

Following that --

Q When you say you worked for the County, that was Nassau County?

A Yes, that is correct.

Following that, I was involved in the preparation of a plan that would justify the County's acquisition of much of the land to the General Services Administration.

This work was done in 1965 and 1966.

At that time, we were to prepare an overall plan along with planning consultants to submit to the general service administration so that Nassau County would be the Agency that would be able to acquire most of the available land in Mitchell Field.

Q Could you state what your involvement was with the preparation of that document?

A Working as a coordinator. There was a team of planners working on it in the County.

Q You were the coordinator of that team?

A Yes.

Q Did you help write the report?

A Yes.

Q Did that report make any recommendation with respect to how Mitchell Field should be developed?

A Yes, it primarily called for --

MR. JASPAN: The answer is only yes or no.

A Yes.

Q Could you state what the general recommendations were made by the County with respect to development to Mitchell Field?

MR. JASPAN: If your Honor pleases, if there is a plan or a report, it ought to be introduced.

MR. BELLMAN: Right.

Q Mr. Kunz, I show you a copy of a document called Nassau Center -- it is a zerox copy of a report, does that -- is this a copy of the report you worked on when you were with the County of Nassau?

A That is correct.

Q Is that a copy of this?

A Yes.

Q That is your last personal copy?

A My copy which I am holding onto.

MR. BELLMAN: It doesn't read too well, but it works. It is a little difficult to read.

MR. JASPAN: So you won't feel bad, I have

a copy. It is the only one I have.

MR. BELLMAN: Can we put it into evidence?

THE COURT: We don't lose anything around here.

MR. JASPAN: May I suggest the one he has?

THE COURT: He wants that.

MR. JASPAN: All right.

MR. BELLMAN: We would like to have marked as plaintiff's exhibit 9 the report called Nassau --

THE CLERK: Document marked for identification plaintiff's exhibit 9.

MR. BELLMAN: We would like to move in evidence the Nassau report prepared in 1966.

THE COURT: All right.

MR. HYMAN: May I have a minute with this report before it is granted.

THE COURT: Yes.

(Pause.)

MR. HYMAN: Your Honor, the Government objects to the admission of this report as against the Federal defendants in that this report was submitted for some purposes unknown to the Federal Government at least in 1966, because there is a picture dated in 1966. And the Federal Government

sold the land to Suffolk County in 1963. The witness testified that this report or reports were made to the Federal Government for the purpose of which they were to use land. If that is so this is not one of the reports.

As to the Federal Government, I object.

THE WITNESS: Your Honor, I stated there was additional land to be obtained. The County did not obtain all they wished to get, for the Nassau Community College and for other uses in the Northwest portion. Before the Federal Government would turn over any more, they wanted to see documentation of what the County was planning --

MR. HYMAN: May I have a voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. HYMAN:

Q Is this report one of the reports for that specific purpose?

A That is correct.

Q Can you point to where in that report it would indicate --

A Area in this upper section in here (indicating).

The County did not own that at the time of the report.

Q This is an all-encompassed report, it shows the whole area?

A Yes.

Q You say this report was specifically requested by the Federal Government?

A To show what the Counties idea was overall to justify --

Q Is there any memorial in this report indicating that?

A No.

Q Do you know if this report was sent to the Federal Government? Did you send it?

A I didn't send it.

MR. HYMAN: The Government objects, your Honor.

THE COURT: We will accept it otherwise.

DIRECT EXAMINATION CONTINUING

BY MR. BELLMAN:

Q To the best of your information, was this report forwarded to GFA?

MR. HYMAN: That is hearsay.

MR. BELLMAN: He was an employee of an Agency.

MR. HYMAN: I am an employee of an agency too and I don't know what the President is doing.

THE COURT: You had to bring that into this case, didn't you.

MR. HYMAN: I don't know what you are talking about.

Q You were an employee of the Nassau Planning Commission at the time, is that correct?

A Yes.

Q To the best of your information, were you so advised by someone in the agency that this report was forwarded to GFA?

MR. HYMAN: Objection.

THE COURT: Sustained. That is not the best evidence. You have to have someone testify or you have to have some proof of mailing or reception, either one.

Q You prepared it at the request of someone, is that correct?

A Yes.

Q Who asked you to prepare that report?

A The County Administration.

Q Who in the County Administration asked you to prepare that report?

A I assume the County Executive Officer and County Attorney's Office since they are the ones who had the responsibility primarily for disposition of land.

Q Did they so request that you prepare this in order to be submitted to the Federal Government?

A It was requested so we would strengthen our overall case.

Q After preparing it, did you turn it over to the County Officials?

A It became County property all the while, because it was a County Agency.

Q Does that report make any reference to the construction of housing facilities at Mitchell Field?

A Yes.

Q Could you state for the Court what recommendation was made in that report with respect to housing?

A It recommends primarily that it be a center of activity for educational activities, cultural activities, commercial activities such as offices, light industrial development, along with housing that would be related to all of these functions.

Q Did the report make a recommendation specifically for inclusion of about 10,000 of housing at Mitchell Field?

A It didn't specify the number of houses. If I remember,

a figure around there would have been -- in round numbers, yes.

Q And is there a map of proposed used in this report?

A Yes, there is.

Q Does it designate residential use?

A Yes, the category labeled 13.

Q What was your next involvement with respect to planning for Mitchell Field?

After your work on the Nassau Center report.

A After this, primarily the preparation of a by county plan which was referred to earlier here.

Q Prior to your preparation of a by county plan, did you do any work with the preparation of the Marcom and Liu studies?

A Not directly, even though our agency supplied a lot of the data we would have developed over the years, these were private planning consultants hired by Nassau County to do work on it.

Q With respect to the by county master plan, did your agency make any recommendation with respect to the development of Mitchell Field?

A Yes, we did.

(continued on next page)

2pm#2 MP/elc

Kunz-direct

Q Could you tell the Court what your recommendations were?

A As shown on the plan, Mitchell Field is indicated as a major center of activity and that being one that would have a number of governmental and commercial and residential uses in the direct center of the county. A place where you would have an interchange of activity.

We indicated a number of these centers throughout the region, all of Long Island, but Mitchell Field was included as the primary area, one, because it had the potential of the activity, such as educational, a coliseum, and --

Q On Plaintiff's Exhibit 1, there is a land use, proposed land use map, is that right?

A That is correct.

Q This is the -- your agency's recommendation for appropriate land use in New York County, is that correct?

A Yes.

Q I will ask you if, on that map, you could draw in Mitchell Field, the borders of Mitchell Field.

Could you do it with a heavy black line? And could you mark Mitchell Field and draw an arrow?

Did the County make any recommendations -- could you, on his Honor's copy, also mark Mitchell Field?

Did the Commission make any recommendation for

housing units at Mitchell Field?

A Yes, sir, we indicated in the Brown category, which is classified as high-density housing, a couple of spots within that area.

Q Did the Commission recommend any particular number of units?

A No, this was not delineated in the plan itself.

Q Did the Commission anticipate the provision of only low-cost units or a mixed range of units --

MR. JASPAN: I object to the form of the question.

Q What type of housing units did the Commission recommend for inclusion at Mitchell Field?

A Primarily, as you see from this category, multiple family housing. No single family houses were recommended because of the idea of this being a downtown center of activities.

Q Did you make this recommendation as to the cost of the housing units to be provided?

A Not specifically. There are overall recommendations for the need of housing, both single-family and multiple-family and publicly-assisted housing, but they are not directly correlated with Mitchell Field in our recommendations.

Q I show you a copy of a document called Nassau

County Comprehensive Plan, are you familiar with this document?

A Yes.

Q Could you tell the Court what this document is?

A This is an updating and explanation of some of the recommendations made by the regional plan, and it was done primarily by the staff of Nassau Planning in 1970 and in '71.

Subsequent to the completion of the bi-counties plan. In other words, taking the Nassau recommendations --

MR. JASPAN: Your Honor, if your Honor pleases, he identified the plan.

It -- just answer the question.

MR. BELLMAN: I can ask him what was done with respect to the plan.

MR. JASPAN: No, you ought to introduce it first. Then we are going to discuss --

BY MR. BELLMAN:

Q Was this document, this document carries on the second page a listing of the Nassau-Suffolk planning board and its officers?

A Yes.

Q Was this document, after it was prepared, submitted to your agency?

A Yes, it was.

Q Would that be the traditional and normal course of business between the bi-county agency, regional agency and planning body for Nassau County?

A In this case, because it is a technical report dealing with the plan, it was submitted for our review and I personally read the text of this report before it was printed.

Q It was submitted to you for review before?

A Yes.

MR. BELLMAN: We would like to have this marked as Plaintiff's Exhibit 10 for identification.

THE CLERK: Document marked for identification as Plaintiff's Exhibit 10.

MR. BELLMAN: We would like to move its admission into evidence?

MR. JASPAN: May I have a voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. JASPAN:

Q On what date was this report issued?

A December, '71.

Q Was it the very last day or two of December,

document.

MR. JASPAN: No. Only in Nassau County.

THE CLERK: Plaintiff's Exhibit 10 previously marked for identification, marked in evidence.

DIRECT EXAMINATION

BY MR. BELLMAN:

Q Now, are you familiar with this document, Mr. Kunz (indicating)?

A Yes, but I did not prepare it.

Q I understand.

Does this report, to your knowledge, recommend inclusion of housing units at Mitchell Field?

A Yes, it does.

Q Does it recommend a specific number of units?

A Over 9,000.

MR. JASPAN: You better look at it, Mr. Kunz.

THE WITNESS: It isn't nine? I said over 9,000.

MR. JASPAN: All right, that is your answer.

(continued on following page)

MR. BELLMAN: Your Honor, on page 190 of this report there is a reference to 9400 units, and there is a special section of discussion of proposals as to Michell Field which appear on pages 188 through 193, and which contain recommendations with respect to Mitchell Field.

BY MR. BELLMAN:

Q Now, going back for a moment to the question of the price of housing in Nassau County, you stated that the median price for a single-family, new home is now over $30,000. Do you have any information as to why housing is so costly in Nassau County?

MR. JASPAN: I object, if your Honor pleases, that has no relevancy.

THE COURT: Do you know why?

THE WITNESS: Primarily lack of land, there is virtually none left, so any parcels are at premium price, so new housing is very, very expensive.

Q So it is your estimation that the lack of land in Nassau County makes it more costly to develop housing; is that correct?

A Yes.

MR. JASPAN: More costly than what?

THE COURT: Is that why housing costs more today?

THE WITNESS: It is largely due to the high land costs.

THE COURT: Isn't it true, isn't a further reason because of the greater income, therefore the greater value, the economics?

THE WITNESS: Well, a person with a greater income --

THE COURT: Aren't there 20 reasons outside of the one that you just gave as to why it costs more, and aren't prices high in the whole state, let alone Nassau County: labor costs --

THE WITNESS: Yes, labor costs have all to be brought into this.

THE COURT: I wouldn't want anybody to think that I were a bump on a log and not know that, never do I want anybody to think that.

Just the lack of land doesn't mean that houses have to go up to $30,000 from 1965, that is true in the slums and in other areas.

THE WITNESS: I think we are talking about new housing.

THE COURT: We are talking about new housing and old housing, it doesn't makeany difference, new housing is just as bad.

BY MR. BELLMAN:

Q Is it true, Mr. Kunz, that the cost of houses varies from community to community?

A Oh, yes.

THE COURT: He is not an expert on that, I wouldn't accept his testimony on that.

MR. BELLMAN: I think he is, your Honor.

THE COURT: No, naturally no. He is an expert in Nassau and Suffolk, he is not an expert anyplace else; I am sure of that.

I know he will give me the wrong answer.

MR. BELLMAN: I gave you the wrong answer?

THE COURT: I say I know he will. But go ahead. He is not an expert on it. He is an expert in Nassau and Suffolk, and that is it.

BY MR. BELLMAN:

Q Is there a difference in cost of housing between Nassau and Suffolk?

A Yes.

Q Where is housing more costly?

A Nassau.

4 Kunz - direct

Q Is it related in part to the saturation of the county?

A It certainly is.

Q Did the Bi-County Planning Commission receive any response from Nassau residents or organizations or governmental bodies with respect to its recommendations to include housing at Mitchell Field?

A I am sorry, will you repeat that?

Q Did your agency receive any response, favorable or in opposition or whatever, to your recommendation to include housing at Mitchell Field?

MR. JASPAN: Yes or no, that is all.

A Yes.

Q Now, will you tell the Court what type of opposition or comment did you receive?

MR. JASPAN: I object, if your Honor pleases.

THE COURT: And in what form?

Q And what form?

THE COURT: What kind of opposition did you receive, what form?

THE WITNESS: The opposition primarily was from groups representing the surrounding communities that were opposed to any housing

within that area. There was objection at public hearings, at public meetings, civic association meetings and by --

THE COURT: You can expect that when any housing community is suggested?

THE WITNESS: We expect that any controversy will follow a recommendation.

THE COURT: That is right, now, next question.

What is so unusual about that?

BY MR. BELLMAN:

Q Did you attend public meetings where the issue of Mitchell Field was discussed?

A Yes, I did.

Q Were you a public speaker in behalf of the Commission?

A I am, yes.

Q Did you make speeches in the Uniondale and East Meadows areas?

A Yes, I did.

Q What were the stated general reasons for the objection for inclusion of housing from the persons present at those meetings?

THE COURT: Let me ask you, did anyone

* * *

EK/dl 3/2

BY MR. BELLMAN:

Q You may answer.

A The objections primarily dealt with the typical objection, the increases in traffic, the increase problems with the schools, the increased density which will cause a citified approach to Nassau County, the usual arguments.

In addition arguments were made in the Uniondale School District that the community already had significant non-white population and that they did not want to unbalance that particular situation.

Q Mr. Kunz, have you had an opportunity to determine the extent of available vacant land in Nassau County which could be used for the development of subsidized housing?

A We estimate today there probably is three to four percent of Nassau County which would be classified in a vacant category. As I stated earlier, seven percent was shown in that report that you have in front of you, in 1966.

Q I would like to show you this report (indicating).

Is that a report that was prepared in your agency?

A Yes, this was one of the first ones leading up to the comprehensive plan.

Q Did you do work on this report?

A YEs, I did.

Q And this is called, "Existing Land Use." Is that correct?

A Yes.

Q And that was prepared as a background document for the Nassau-Suffolk Regional Plan?

A Right.

MR. BELLMAN: I would like to have this marked as Plaintiff's Exhibit 11.

THE CLERK: Document marked for Identification as Plaintiff's Exhibit 11.

MR. BELLMAN: I move it's admission into evidence.

MR. JASPAN: I just want to look at it for a moment.

If your Honor please I assume they are accepting documents like this as expressions of opinion by a group with a certain amount of expertise and not necessarily as proof of everything that may be said. If that is what it is, I would have no objection.

MR. BELLMAN: Well --

MR. JASPAN: (continuing) because there are opinions expressed in these books rather

than facts, and if you want to take it only as to the facts, we will let them in, but if you are taking opinions along with the facts, then you have a different ballgame.

THE COURT: I am taking it as part of the circumstantial evidence that comes before me, and whether there is a change of events which may result in different conclusions, I don't know.

MR. JASPAN: All right.

BY MR. BELLMAN:

Q You stated that in 1966 there was a finding of seven percent of the land in Nassau as being vacant?

A Yes.

Q And you find that, that appears in this Plaintiff's Exhibit 11; is that correct?

A That is the fact.

Q Now, you stated that today, since that time -- well, since that time have you been making an effort to keep advised as to the availability of land in Nassau-Suffolk counties?

A We attempt to keep estimates. As I say, this is the opinion portion of it, and that is about three to four percent would still remain.

Q How did you determine the three to four percent figure?

A Primarily we know when large concentrations of developments occur, large acquisitions for public spaces or changing to industrial or commercial use, we try to keep a tab on all of the land.

Q How many acres are we talking about when you are saying three or four percent of Nassau County?

A Less than 10,000 acres.

Q Less than 10,000 acres?

A Right.

Q Now, with respect to those 10,000 acres, is any of that land, vacant land, currently zoned for commercial industrial use?

A Oh, yes, there are at least 500 acres or more zoned for non-residential use.

Q In that 10,000 acres, does that include Mitchell Field as well?

A Yes, the portions that would be vacant, yes.

Q That would be about 500 acres; is that correct?

A Right.

Q Is any of the vacant land, other than Mitchell Field, other than this commercial-industrial land, would

it be difficult to develop for residential use?

A Some of the land could have water problems like along the waterfront, land that is marginal in nature.

Q Approximately what percentage of the land, how many acres; do you have any estimate?

A No, I'm sorry, I don't. It could range as much as 500 acres to 1,000 acres.

Q Are any of the vacant parcels other than Mitchell Field reserved for institutional or recreational uses?

A A number of the vacant parcels, as determined in our land use, were in the North Shore where you have relatively low denisty zoning and housing on one or more acres and --

Q Aside from the 500 acres at Mitchell Field, I take it there is approximately 500 vacant acres that we are talking about; is that correct?

A I don't know the exact number today, it changes.

Q It changes?

A Yes, quickly.

Q Aside from that at Mitchell Field, the Mitchell Field tract, is there any significant tract of land vacant land in Nassau County that could be used today for the development of subsidized multi-family housing?

A There are sites scattered around in the towns of

Oyster Bay and North Hempstead and even in Hempstead.

Q Approximately how many sites are there?

A For large development, no more than half a dozen.

You are talking in the number of a couple of thousand units.

Q The rest would be, the remaining would be smaller sites, much smaller developments?

A If you are talking about redevelopment, that is another thing, I am not including redevelopment, this would be vacant land, generally small.

Q When you said there are wetlands, -- did you give me a figure of how much acres would be involved?

A I said I was not sure because some pieces are, you know, improperly built on after a developer does a field survey of them.

Q Could you name for me the major parcels that you are aware of, the five or six or so.

A Just unaccounted for, you mean?

Q That are as unaccounted for and could be used for development.

A There are pieces in Hempstead Town-Lido Beach area that are presently not used and in Oyster --

Q How many acres, do you have any idea?

A Five hundred to 1000.

Kunz - direct

A There is a large tract of land in Woodbury and Jericho, in Oyster Bay town and in Port Jefferson, if you take the sandpit area, there is roughly 1000 acres of sandpits some of which is permitted but more than 500 are available technically up there.

Q Are there any large tracts in the town of Hempstead?

A The Lido one I pointed out originally, that is one of the larger ones, and I am excluding Mitchell Field, of course.

(continued on the next page.)

EK/LH 3PM (3)

Q In the 1,000 acres?

A Yes.

Q Is there any problem with the development of the Lido Beach area?

A Yes, somewhat, there is a wetlands problem in that area, water and sewer problems, there are certain limitations in that area.

Q That site would be away from the core center of Nassau County?

A It is waterfront, generally isolated.

Q The Jericho and Woodbury parcels, are they also isolated or are they in the center?

A They are in the so called corridor, even though they are not adjacent to existing town activities.

Q The vacant parcel that you are mentioning, would they be costly parcels?

A As I stated before, the last pieces always go for the highest prices because you have a commodity that is not any longer available, so that the person holding out the longest usually gets the highest price.

Q Aside from the Mitchell Field parcel, do you have any opinion generally as to the availability of vacant land in Nassau County for the construction of low cost housing?

A It is just a difficult situation wherever you would

look for it because there is not an area that has a large amount of space around it where you wouldn't have an immediate opposition built right in.

THE COURT: We will take a five minute recess.

(A five minute recess was then taken.)

THE COURT: I am going to take the motion, that is why I came out.

MR. STOKES: Thank you, your Honor.

THE COURT: I will dismiss it without prejudice and in the event it should be required, you will be reinstated in this action, and application can be made to reinstate you.

MR. STOKES: Thank you, your HOnor.

THE COURT: This case may last for six weeks, you can always bring him in.

MR. BELLMAN: We have no objection to preceeding in that manner.

THE COURT: All right.

As far as the Government is concerned, I'm still reserving on the Government's motion.

MR. HYMAN: I didn't make a motion, I would like to make it.

THE COURT: I will reserve you anyway.

193a * * *

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THE CLERK: Case on trial, Acevedo against Nassau County, et al.

MR. THOMPSON: Eugene Nickerson.

E U G E N E H. N I C K E R S O N, called as a witness, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Will you state your profession, please?

A I am a lawyer.

Q With whom do you work?

A I am a partner in the firm called Nickerson, Kramer, Lowenstein, Nessen & Kamin.

Q Where is that law firm located?

A 919 Third Avenue in Manhattan.

Q For how long have you been associated with that law firm?

A Since January 1, 1971.

Q Previous to that time how were you employed?

A I was employed by the County of Nassau as County Executive.

Q For how many years did you serve as County Executive?

A For 9 years.

Q Previous to your service as County Executive, by whom were you employed?

A No one. I was a partner in a law firm called Hale, Stimpson, Russell & Nickerson.

Q Where was that law firm located?

A 122 East 42nd Street in Manhattan.

Q For approximately how long were you associated with that law firm?

A For precisely 10 years.

Q Where did you go to law school?

A Columbia.

Q When were you graduated?

A 1943.

Q Could you define in your own terms the functions and responsibilities of the County Executive of Nassau County?

A He is -- under the County charter, he is the chief executive officer. He has the administrative responsibility over all of the departments. He appoints most of the department heads.

Some are appointed by boards which the County Executive in turn appoints.

Q For how many terms did you serve as County

Executive?

A Three.

Q Were you elected to the position?

A Yes.

Q Were they three 3-year terms?

A Yes.

Q When you became County Executive, did you have occasion to take any steps to acquire a tract of land known as Mitchell Field for the County?

A Yes.

Q Had efforts to that end already been undertaken at the time you became County Executive?

A I don't think so. I remember my predecessor, Holly Patterson, appointed a committee, but I don't think there were any actual negotiations, because it had not yet -- it had been declared excess to the needs of the Air Force, but it had not yet been declared surplus to the needs of the United States, and there is a distinction.

Q Do you know what that distinction is?

A Yes. When it is declared -- under the law, when it is declared excess to the needs of the Air Force, it means that the Air Force has no more need of it, and then there is a procedure whereby each of the departments of the Federal Government are circularized, if I recall correctly, by the

GSA, and are asked whether they have need of it or any part of it. And to the extent that no department of the United States requests it, it is declared surplus.

Q At the time that Mitchell Field, part of the land known as Mitchell Field were declared surplus, what actions did you take with regard to those lands?

A Well, there is a system of public benefit discounts, where a local government can acquire surplus land at a discount if it is used for specified purposes; for example, for educational purposes, we got 100 percent discount, for use for our community college. We also, as I recall, put in for some park land where we would get 50 percent discount, and a part of it we purchased, or attempted to purchase outright.

Q When you talk about attempting to purchase it outright, what do you mean?

A Well, eventually we did.

There was some controversy over the price, and there was some feeling within the Board of Supervisors, which had the ultimate power to approve or disapprove of the purchase, as to the price, and as to whether we should have been able to obtain from the Federal Government more park land, and thus get more of a discount.

Q Would you describe to the Court the

controversy which occurred with regard to the price?

A Well, the Board of Supervisors basically said we were paying too much and that we should get -- we should put in for a park discount for part of it, in which event we would get 50 percent of it.

Actually I don't think they had a dispute as to the value of the land in the sense that if we were going to purchase it, that the price which we paid, which my recollection is it was somewhere in the neighborhood of $32,000 an acre, they did not dispute that that was a good price for the County of Nassau.

Q Was there land which, during your administration, was purchased outright from the Federal Government?

A Yes.

Q Do you recall how many acres were purchased outright?

A I don't recall precisely. My recollection is it was in the neighborhood of 400, 450, but I could be wrong.

Q Were you present at the closing when the acreage which was purchased outright was closed?

A Yes.

Q Let me show you a document which is labeled Quick Claim Deed, dated the 27th of June, 1963. Do you recognize that document?

A I believe this is the deed, but I could not be absolutely -- a copy of the document. I could not be absolutely certain.

Q Do you recall having seen it before?

A I saw a deed, and this looks like the one.

MR. THOMPSON: Will you mark it for identification in two parts, please?

Mark it for identification as Plaintiff's exhibit 12.

THE CLERK: Document marked for identification as Plaintiff's exhibit 12.

(So marked.)

MR. THOMPSON: Your Honor, I move its admission.

MR. JASPAN: No objection.

THE COURT: Mark it.

THE CLERK: Plaintiff's exhibit 12 previously marked for identification marked in evidence.

(So marked.)

Q Mr. Nickerson, to your knowledge, with regard to the property deeded to Nassau County on June 27, 1963 for 13 million and some odd dollars, were there any restrictions on the use of that land?

A Yes. On the part that we acquired for educational purposes, they were restricted to educational purposes. I believe that the rest of it we could do anything we wish with it. And we did not acquire any, as I recall, at that time for park purposes.

Q Did there come a time later on in your administration when land was acquired for park purposes?

A At Mitchell Field, yes.

Q Do you recall when that was ?

A It was two or three years later. They declared more of it surplus.

Q At the time when additional land was declared surplus, after 1963, do you recall submitting any documentation to the General Services Administration, indicating to General Services Administration what the County's plans were for the use of the entire Mitchell Field Tract?

A I think we did.

Q Let me show you a letter dated October 7, 1966 to the General Services Administration , and bearing your signature.

Does this refresh your recollection?

A Yes, this is my signature and it does refresh my recollection.

Q Did you transmit to the General Services Administration a comprehensive plan to show the uses proposed for the entire Mitchell Field tract?

A Yes.

Q Let me show you a document marked Nassau Center --

MR. JASPAN: Excuse me, Mrs. Thompson. Are you offering that letter?

MRS. THOMPSON: I will.

MR. JASPAN: I would like to see it.

MRS. THOMPSON: Let me mark it first for identification.

THE CLERK: Document marked for identification as Plaintiff's exhibit 13.

(So marked.)

(continued on the next page.)

MR. JASPAN: I have a copy, so just hold it and I will read mine.

MRS. THOMPSON: Your Honor, I offer the letter in evidence.

MR. JASPAN: No objection.

THE COURT: Mark it.

THE CLERK: Plaintiff's exhibit 13 previously marked for identification now marked in evidence.

(So marked.)

BY MRS. THOMPSON:

Q Mr. Nickerson, I am handing you a document which is entitled Nassau Center.

Is this the document which was submitted to the General Services Administration?

A I believe this was, yes.

MRS. THOMPSON: I would like the record to show that Mr. Nickerson is referring to Plaintiff's exhibit 9.

Q Mr. Nickerson, do you recall whether the Board of Supervisors authorized you to send this comprehensive plan to the General Services Administration?

A My letter says there is attached a resolution, and there is one attached, which is approved -- which was

approved by me as County Executive under the charter, and it authorizes and empowers me -- or the County Executive, to file the comprehensive plan.

Q Let me also direct your attention to the resolution of the Board.

A This is it.

Q Is that what you were referring to?

A Yes.

Q Fine.

Mr. Nickerson, while you were County Executive, what steps did you take to plan for the development of Mitchell Field?

A The first thing I did was to appoint a committee, of which I was chairman. My predecessor, Holly Patterson -- I can't remember all of the people on it. Do you want the people on it?

Q Those whom you remember.

A Thomas Goodfellow, who was president of the Long Island Rail Road; Arthur T. Roth, who was chairman of the board of Franklin Bank; Admiral Foley, who was a vice president of Hofstra University; Palmer Farrington, who was residing supervisor of the Town of Hempstead. If you have a list it would refresh my recollection.

Q I'm sorry, I don't have a list.

A At any rate, they were distinguished citizens, bi-partison, and the objective was to try and develop a plan for the development of this tract of land so important to Nassau County and lying right in the center of Nassau County.

Q Did that committee which you appointed, make any recommendations to you?

A I was on the committee and, yes, we did make recommendations.

My recollection is that that committee approved the exhibit you just showed me which is entitled Nassau Center.

Q You are referring to the blue document, which is plaintiff's exhibit 9?

A Yes. That is my recollection, and I think that that is recited in the Board of Supervisors' resolution which is attached to my letter, which I just identified.

Q Was the committee to which you are referring the Mitchell Field Planning Committee?

A Yes.

Q After the Mitchell Field Planning Committee adopted the Nassau Center plan, plaintiff's exhibit 9, what other actions were taken by you?

A You will have to --

Q To develop Mitchell -- to further plan for

and develop Mitchell Field.

A The time sequence is hazy in my mind, but there came a time when it seemed to me important to try and get the whole process out of the political arena, because of the fact that the Board of Supervisors was overwhelmingly controlled by a party not of my persuasion, my political persuasion, and there was, so to speak, an impasse And so it seemed to me important to develop some instrumentality where that political conflict would be minimized, or perhaps obviated.

And so I suggested to the then presiding supervisor of the Town of Hempstead, Mr. Ralph Caso, who was the majority leader of the Members of the Board of Supervisors, that we ought to set up a non-profit corporation called the Mitchell Field Development Corporation, consisting, as I recall it, of 9 members, 6 to be appointed by the County Executive, but subject to the approval of the Board of Supervisors, and three to be appointed by the Town of Hempstead, within the confines of which Mitchell Field lay.

That proposal was accepted. The Corporation was set up. I then appointed what I regarded as the most distinguished citizens in Nassau County, without regard to political affiliation.

I appointed as chairman the Honorable Bertram Harnett, who is -- I guess I didn't appoint the chairman. I appointed as members, 6 members, and he was later elected by the board as chairman.

The 6 members that I appointed were Bertram Harnett, now a Supreme Court Justice in Nassau County; Leonard W. Hall, an attorney, former Republican National Chairman; Sidney Friedman, who was chairman of the Board of the National Bank of North America -- it may have been the Meadowbrook Bank at that time; Arthur Roth, chairman of the Franklin National Bank; Loring Hubbell, a member of the Board of Regents of the State of New York, appointed by the legislature and long time trustee or counsel for the Village of Garden City, which abutted Mitchell Field; and I believe the 6th member that I appointed was Eugene F. Gibbons, who had been chief engineer of the State of New York and thereafter a commissioner of Public Works of the County of Nassau, and who had a familiarity with the project and who was, at that time -- had gone into the private engineering practice.

Three members were appointed by Mr. Caso, and I have forgotten their names. But if you refresh my recollection --

Q I have here a document entitled Nassau Center,

which at the back lists members of the Mitchell Field Development Corporation.

Does that refresh your recollection?

A Yes. These are they, Mr. Porchelli, Mr. Bierer and Mr. Ewald, yes.

Q Were all of your nominations approved by the Board of Supervisors?

A All of them.

Q You indicated that Mr. Caso appointed three members?

A No, the Town of Hempstead did.

Q Were the Town of Hempstead nominees submitted to the Board of Supervisors?

A No.

Q Were they submitted to you for approval?

A No.

Q Did there come a time when Wilton Beckett did any work with regard to the planning of Mitchell Field?

A I believe work was done prior to the Nassau Center, but yes, they did work on it. In particular, they worked -- I think their particular focus was on the whole cultural center part of it and not on the total development. That is my best recollection.

Q With regard to those organizations that worked

on total development, then, is it your testimony that it was primarily the Mitchell Field Planning Commission and then the Mitchell Field Development Corporation which worked on the planning of the overall tract during your administration, to the best of your recollection?

A I don't recall whether that Nassau Center plan came prior to or subsequent to the appointment of the Mitchell Field Development Corporation -- the creation of the Mitchell Field Development Corporation.

Q Now, with regard to the creation of the Mitchell Field Development Corporation, what work did the Mitchell Field Development Corporation undertake with regard to the planning of Mitchell Field?

A They hired people to help them in developing the plans.

My recollection is that there was a firm called Markum that did part of the work and they had a planner -- I have forgotten the name of his firm, but the gentleman's name was Liu, I think it is L-i-u.

Q Let me show you a document entitled Nassau Center, Mitchell Field Development Corporation.

Have you seen this document before?

A Yes.

Q Is that a document which was prepared by the

Mitchell Field Development Corporation?

A Yes.

Q Dealing with the planning of Mitchell Field?

A Yes.

MRS. THOMPSON: Let's mark it for identification, please.

THE CLERK: Document marked for identification as plaintiff's exhibit 14.

(So marked.)

MRS. THOMPSON: I move to offer it in evidence.

MR. JASPAN: No objection.

THE CLERK: Plaintiff's exhibit 14 previously marked for identification, marked in evidence.

(So marked.)

Q Mr. Nickerson, as to the Mitchell Field Development Corporation, was it funded by the County?

A Yes.

Q And did the funds which it received come by way of approval of the Board of Supervisors?

A All funds that are extended by the County of Nassau have to be approved, either in the budget, or otherwise by the board of supervisors. The answer is yes.

Q And this was, in fact, what happened with the Mitchell Field Development Corporation?

A Yes.

Q The development of housing was proposed in the Nassau Center report, was it not?

A Yes, I believe so.

(continued on the next page.)

Q Do you know why housing was recommended at Mitchell Field?

MR. JASPAN: I object to that question, your Honor.

THE COURT: I'll allow it. Bad question. I'll allow it.

THE WITNESS: Referring first to the Nassau Center report, and given the operation of my own -- why I approved it --

THE COURT: That's why I allowed the question.

THE WITNESS: Yes.

There were really two -- two reasons that operated in my mind on housing at Mitchell Field. One was that I saw a tremendous need for housing in -- in the County, which was not being fulfilled.

And given the nature of -- of the zoning powers in the towns and villages, it was really unlikely to fill that need, and was unlikely to be filled for a variety of reasons, one of which was that people don't like to see their neighborhoods changed, and also, they are very concerned about people -- at least that

was my impression -- people moving from the City into the suburbs and changing their neighborhoods.

And it seems to me that the -- that the greatest opportunity to get some housing built with the least political opposition was at Mitchell Field, which was relatively isolated.

THE COURT: While you were thinking, were you thinking about any particular type housing?

THE WITNESS: Yes, I was thinking of a mix of housing, your Honor. I was thinking not only of -- of luxury housing, but I was also thinking in terms of low income housing, because of the -- because the greatest -- one of the great needs, and I personally went out and inspected the housing that was available, for example, in --

THE COURT: Would that be feasible to put high cost housing, middle cost housing, low cost housing, all in the same area?

THE WITNESS: Oh, I think so, your Honor. It was --

THE COURT: Is it operable?

THE WITNESS: I believed that it was,

your Honor. It depended on whether you were willing to do it and what resourses you wanted --

THE COURT: Now, when I'm speaking, of course I'm not longer speaking of the operation of your plan, I'm speaking of the sociological problems that results when the same thing occurs.

THE WITNESS: Yes, it was a tremendous tract, your Honor, of land, and it seemed to me that you could fit all of those in, a variety of housing into that tract.

I didn't fix myself on what portion of the land would go for what purpose. Eventually I -- I had hoped that the planners would come up with that.

THE COURT: In other words, you didn't determine the acreage that would be applied to, say, the high cost housing, and the acreage that would be applied to the low cost housing, and the acreage that would be applied to the middle cost housing?

THE WITNESS: No, I just--

THE COURT: At no time did you assume that all low cost housing should be put there?

THE WITNESS: You mean that the entire --

all the houses?

THE COURT: Nothing else but low cost.

THE WITNESS: No, that was not my feeling.

THE COURT: That's what I wanted to know.

THE WITNESS: I thought that there should be low cost housing on the tract, but I didn't think that all the housing should be -- all the housing on the tract should be low cost housing.

The -- the -- to finish my answer, the -- I could see from my own trips around the county, and I became very concerned about the lack of low income housing, I became very concerned about -- and it was brought forth in a very dramatic way to me, the inadequacy of our housing stock, one of -- by reason of the fact that we had to put public assistance recipients in motels, and I personally went and inspected those motels, and could see that it was totally inadequate for families, and was tremendously expensive for the taxpayer, and I could see this situation deteriorating very rapidly, and -- and the spreading of -- of slums in -- in various areas of the county, unless we moved to do something about the low

cost housing problems.

THE COURT: What period of your term of office would this have the foreseeability of taking place?

In other words, were you in office 3 years, 2 years, 6 years? In other words, there had to be a point that you were, of course, seeing deterioration, and was it in the 9 year period that you served?

THE WITNESS: Yes, I think -- I think it became -- like everything else, it became more and more evident to me as I grappled with my responsibilities, and I don't -- can't fix a precise date when it became terribly important to me to try and do something about the housing.

THE COURT: There had to be a period -- I'm talking about the foreseeability about it now -- there had to be a period of deterioration, with respect to foreseeability, where because of these things you just discussed with the Court by way of your testimony, that there was a question of deterioration, and having placed people in certain positions that were not conducive to good living in any event?

THE WITNESS: Yes.

THE COURT: Now, at what stage of your term of office did you determine that this type of living was going to deteriorate, and what were you doing about it at that time? Forgetting about Mitchell Field?

THE WITNESS: I can't fix a date on that, your Honor.

THE COURT : I just wanted to --

THE WITNESS: My best recollection is in -- when I was about halfway through my -- my total tenure there that -- that this became acute in my consciousness, that we had to do something about the housing.

THE COURT: I had one other question , and then we'll go back to her.

On this Nassau-Suffolk comprehensive development plan, there is something in here that indicates that there were 200,000 -- rather the saturation point was 200,000 additional people that had come into Nassau to live. Now, I don't know whether --I think they said between 1960 and 1970. That would be just about your term of office?

THE WITNESS: Yes, I went out at the end of 1970.

THE COURT: That took in Mitchell Field, as I understand?

THE WITNESS: I think it did, your Honor, but I don't have a clear recollection on that.

THE COURT: There wasn't too much flexibility in any event, we were not talking about millions and millions of people, we are talking now about quite a limited number of people when you come right down to it, of 200,000, as far as being flexible at that stage, or the financial income of the people themselves, from poverty to rich, let's say?

THE WITNESS: Yes, except my recollection of --

THE COURT: Proportionately speaking?

THE WITNESS: Yes, except my recollection, your Honor, was that the character of the community was changing during my term. In other words, there were more older people, there were more poor people, and -- in particular, blacks that were coming into the county, and at a later

stage --

THE COURT: That's not born out by the development plan, because it says there were 4 percent, I think, back in 1960, and there were still 4 percent back in 1970, if I recall the testimony as of yesterday.

THE WITNESS: I think there were about 3 percent when I came into office, and it had gone up to something like 6 percent --

THE COURT: Well, pretty close. The influx of the additional wasn't that great; in other words, the changeover wasn't that great even in those families, wasn't that great, except in some statement about the young people were leaving and the old people were staying.

Did you find that too?

THE WITNESS: My recollection is, yes, the age profile was increasing.

The problem of course, with the blacks, is that percentage-wise, a tremendous --

THE COURT: Well, we are not concerned with blacks, you know. See, we are concerned -- that's exactly the reason why I decided to put you on the track that I did -- we are concerned

with this court having set a rule of a class action determining not only blacks, black-Spanish or Spanish and poor whites, we are concerned with all categories of people. We are not going to limit it to black people, because there are people of all races that are poor, and Im not going to say just black people are poor. All kinds of people are poor, economics doesn't stay with one type of race. You do know that, don't you?

THE WITNESS: I do know that, your Honor. I have not seen --

THE COURT: Economic wealth doesn't just stay with the whites. I have seen it in other nationalities, too.

THE WITNESS: Your Honor, I'm here under subpoena, and I want to answer questions to the best of my ability.

THE COURT: I just didn't want to guide you, lead you down a long avenue.

Q Picking up on some --

THE COURT: I think we'll take a five minute recess. I'll be out within 5 minutes.

(Recess had.)

(After recess.)

THE COURT: All right.

BY MISS THOMPSON:

Q Mr. Nickerson, at the break I believe you were still in the process of responding to my last question with regard to housing.

A Yes, the other reason that was in my mind, which was emphasized by the planners to me, was that wnen you had a center like this, that you needed people around it to create excitement, and so forth. I just couldn't stick a cultural center or a coliseum off in the wilderness. And this was another reason that they emphasized to me, and which sounded sensible to me, that you also ought to have housing to create traffic and -- of people and an excitement of people.

(continued on the next page.)

Q Earlier, when you were responding to my previous question, you indicated that you had been aware of the housing need, particularly the low income housing need, in the county?

A Yes.

Q How did you become aware of that need?

A Well, the most -- the most dramatic thing that I now recall was that -- the placing of public assistance recipients in motels at some point -- and I've forgotten the year; it might have been 1968 -- there was a diminution by the State of the amount of public assistance going to people, and at that time I wondered what we could do for these people who actually were -- whose actual subsistance was going to be cut down, and we initiated various programs.

And I retained on behalf of the County, Hortense Gabel, who had been -- I've forgotten her title -- she's now a Judge of the Civil Court -- in the Wagner administration, in the housing field, but generally, she had been very familiar with the problems of the poor, and I retained her to make a study and to make recommendations of what we, as a county, in the light of these cutbacks in public assistance coming from the state and federal government, could do.

And she made a report in which one of the things that

she emphasized was the lack of housing for the poor. And she made recommendations as to what we might do.

Q Did Hortense GAbel also have occasion to study the particular problems of the minority residents of the county?

A Yes.

Q Let me show you a copy -- First let me ask you do you recall what Hortense Gabel's major recommendations were after her study?

MR. JASPAN: I object, your Honor. If she made them in writing -- there should be an offer of the writing.

THE COURT: Yes, if she made them in writing, do you have them?

Q Mr. Nickerson, let me show you a copy of your budget message of November 8, 1968, and direct your attention to page 9. Does that contain a summary of Miss Gabel's recommendations to you?

A Mrs. Gabel.

Q Mrs. Gabel's recommendations to you?

A Or Ms. Gabel.

Yes.

Q What were Ms. Gabel's major findings on the basis of her report?

MR. JASPAN: If your Honor please, I still object. I have a copy of the budget message, but there is no reference to Mrs. Gabel, and I assume that the well-known consultant it refers to means Mrs. Gabel, but I think if you want to introduce recommendations by Mrs. Gabel, you shouldn't do it this way. Either she gets on the stand or it's shown under the Shopbook Rule as one of their records.

THE COURT: No, he had a conversation with her as a County Executive, and he may tell us.

MR. JASPAN: How do I cross examine Mrs. Gabel through Mr. Nickerson?

THE COURT: You can test his recollection later on.

You call her Judge Gabel. She's in City Court?

THE WITNESS: Yes.

THE COURT: You can call the Judge up and ask her to come.

MR. JASPAN: Well, I press my objection that this is an improper form of evidence.

THE COURT: She'll show up if you call her,

I'm sure.

THE WITNESS: Well, the major findings were that -- that the gap between the economic levels was going to widen, that although Nassau was the wealthiest county in the state, about 16,000 families in 1966 had incomes under $2,600 and 63,000 had incomes under $5,000; that that would -- would continue to widen unless something was done about it.

The report did deal, and she did deal, specifically with the black population, and found that it was 3.8 percent of the population in '65, that under the planning studies, it would grow to 6.6 by 1985, or 35 percent of the total increase during that period.

And what was most significant to me, and which confirmed my own personal impression, was that half of the black population lived in -- in sub-standard or doubled-up housing, and a great many of them, thousands, paid more than 25 perc ent of their total income for that housing.

And she dealt with the vacancy rate in the county, which was extremely small, practically non-existent, 1.4 percent, and made -- came to

certain conclusions as to how many new dwelling units would need to be built in the next 10 years, which she estimated at 66,000.

What she recommended was that we try to create a non-profit corporation, there being -- there being considerable doubt as to housing powers of the county as opposed to the towns and villages, that non-profit corporation to assist in -- in trying to eliminate sub-standard housing, either by building or rehabilitating some 20,000 lower -- dwellings for lower income people.

And now I've forgotten the question.

Q I have been asking you for Mrs. Gabel's recommendations.

A Yes, that is -- that is the substance of them, and they are set forth in my report, budget message to the Board of Supervisors, which was -- I was required to file under the charter, dated November 8, 1968.

MISS THOMPSON: I'd like to mark the November 8, 1968 statement of Mr. Nickerson for identification.

THE CLERK: Document marked for identification as Plaintiff's exhibit 15.

(So marked.)

MISS THOMPSON: And I'd now like to move its admission.

MR. JASPAN: I object to its admission, only upon the ground that it attempts to incorporate by reference the report or alleged report of Mrs. Gabel, and I still respectfully suggest that it should be --

THE COURT: He adopted it as the County Executive, and had it as part of his budget message, so it's admissible.

MISS THOMPSON: You don't question the authenticity of the budget message, do you?

MR. JASPAN: The authenticity? No, just the wisdom.

Nothing personal.

THE WITNESS: I'm out of politics now.

THE COURT: He's out of politics. He says it's much more remunerative to be in what he is in now, and I have to agree with him.

Q Mr. Nickerson, did you actually propose to the Board of Supervisors that a housing corporation be created?

A I believe I included in my budget message in the -- or set aside a part of the -- Let me rephrase that: I believe

in my message I recommended that there be created such corporation, and that funds be made available.

Yes, in the same budget message of November 8th, I said that we -- we had to anticipate some activity in housing and business in the disadvantaged area, "Whether as proposed in the report recommending formation of the aforementioned non-profit corporation or through some other instrumentality."

And I said that this would require initial financing of approximately $200,000, which I included in the contingency fund.

Q And is this the sum of money which would have had to have been approved by the Board of Supervisors?

A Yes, all of -- the Board of Supervisors, under the charter, can approve the budget as submitted by the County Executive, can raise the amounts for any activity, or can lower it.

Q Do you recall whether the Board of Supervisors approved the sum of money which you had requested for the contingency fund for the non-profit corporation?

A They did not.

Q Other than the suggestion of the creation of a non-profit housing corporation, during the time that you were the county executive, did you take any other actions with

regard to making it possible to develop housing for low income or moderate income persons?

A Well, we tried to set up the non-profit corporation, and I appointed a committee of which I believe Harold Gleason, then president of the Franklin National Bank, was chairman, to look towards the feasibility of it.

And I met with various people around the county to try and urge them -- businessmen and others -- to try and urge them to participate in this effort.

Q And did they participate in the effort?

A Well, they had a lot of meetings. We didn't see -- my recollection is we didn't see very much cash.

Q Did there come a time during your administration, when you made -- when you took any actions with regard to the development of any middle income or low income housing on Mitchell Field?

A Well, you will have to -- you will have to make that more specific.

Q Do you recall any time during your administration, when you had any negotiations or entered into any contracts with an organization known as the Able Housing Corporation?

A Oh, yes, that was -- that was the -- yes, that was the housing for the aged, I believe.

Q Let me show you a document --

A That was on a -- that was-- they were going to develop a tract of Mitchell Field land and create housing for the aged, as I recall.

Q And is that land which the county was going to sell to the corporation?

A Yes.

Q Let me show you a document and -- entitled -- well, which stated: "This agreement made the 9th of June, 1970, between the County of Nassau and the Able Housing Corporation."

A Yes, I recall this and I can identify my signature, June 9, 1970.

MISS THOMPSON: I'd like to mark this for identification.

THE CLERK: Document marked for identifi - cation as plaintiff's exhibit 16.

MISS THOMPSON: I move its admission.

MR. JASPAN: No objection.

THE CLERK: Plaintiff's exhibit 16 previously marked for identification marked in evidence.

(So marked.)

Q Mr. Nickerson, do you know whether the Able

Housing Corporation ever constructed Senior Citizens housing at Mitchell Field?

A I don't believe they did, at least not while I was in office.

Q Do you know why not?

A I can't recall.

(continued on the next page.)

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Q You indicated in response to one of my previous questions that housing was proposed in both of the Nassau Center plans and --

A Yes.

Q Are you aware of any public reaction to those proposals?

MR. JASPAN: I object to that, if your Honor please.

THE COURT: I will allow it.

A You mean to the housing part of it or to the entire report?

Q To the housing part of it.

A I don't. I know that there was some feeling against housing at Mitchell Field, I don't know whether it was specifically in response -- I can't recall whether it was in specific response to the reports, my best recollection is that it was not to the first one that you showed me, this bigger one (indicating.) I have forgotten the exhibit number.

Q Are you referring to plaintiff's exhibit 9?

A Plaintiff's exhibit 9, but I think at that time that plaintiff's exhibit 14 was made public, there was a reaction against housing.

Q How did you become aware of the reaction against housing?

A I remember a Board of Supervisors meeting with respect to -- Now it has refreshed my recollection -- with respect to housing for the elderly at Mitchell Field which was attended by the residents of East Meadow, I believe hundreds of them came and objected to having housing for the elderly there because it would increase their taxes. This was in their portion of the tract of Mitchell Field which lay within the East Meadow school district, and they had been told that this would increase their taxes because housing for the elderly would be subsidized and therefore, not pay its share of the taxes.

There was also, and I don't know whether you intended to include this, there was also quite a reaction to welfare recipients being housed at Mitchell Gardens, which was at the northeast corner of Mitchell Field. These were in the old barracks which public assistance recipients had moved into, and there was considerable -- it was mostly blacks -- there was considerable agitation within the community of Uniondale, which was part of the unincorporated area of the Town of Hempstead, and in whose school district the bulk of Mitchell Field lay, there was considerable agitation to get us to throw the public assistance recipients out of Mitchell Gardens, because those children, mostly black children, would go to school in the Uniondale school district.

Q With regard to Mitchell Gardens, you refer to barracks:

Were these barracks that had been left from the time when the field had been used by the Air Force?

A Yes.

Q Did they have houses for families --

A Yes.

Q -- as opposed to single members of the Armed Forces?

A Yes, there was housing for the enlisted men as opposed to the officers who had much more magnificant housing in the main part of Mitchell Field.

Q We were referring to the recipients --

A Public assistance recipients.

Q Do you know where these public assistance recipients had been living before they moved?

A They had been living in motels.

Q What was the condition of the barrack housing at Mitchell Field?

A At that time, and I have forgotten the precise date, I think it was '68 or '9, it was deteriorating, but the public assistance recipients came in and rehabilitated them themselves and the county assisted in that. I assigned people from the Public Works Department to assist in

rehabilitating that housing.

Q Is it not true that you, yourself, helped with the rehabilitation of the housing?

A Myself personally?

Q Yes.

A I went out one day and helped paint and so forth, yes.

Q Do you know the number of persons who moved in to Mitchell Gardens or the number of families?

A I have forgotten, my best recollection is there were 30 to 40 families, something on that order.

Q You indicated before that there was a problem with regard to the Uniondale school district:

It is true, is it not, that the Uniondale school district wouldn't admit the welfare recipients' children to the school; is it not?

A I believe there was a lawsuit brought by the parents of the public assistance recipients which, I think, eventually they won, to allow them to go to the Uniondale school district.

MISS THOMPSON: I would ask the Court to take judicial notice of the decision in Vaughn against the Uniondale Free District Number 2, Town of Hempstead, 314 New York Supplement, 2d Circuit, 1970.

* * *

THE WITNESS: Yes.

THE COURT: In other words, to get them out of hotels, you put them into the family barracks.

It has been done before and will be done again.

THE WITNESS: Yes, your Honor, although I did conceive --

THE COURT: It has been done throughout the country.

THE WITNESS: Yes, but I did conceive of housing in that northeast corner, I did conceive, your Honor, to respond to the question, I did conceive of eventually permitting housing possibly on that northeast portion of Mitchell Field, but you are right, it was only a temporary measure.

THE COURT: It goes to the question of need, and that is what you were talking about, necessity.

All right, go ahead.

(continued on the next page.)

MISS THOMPSON: Your Honor, would you like a copy of the decision?

THE COURT: We will mark it for identification.

THE CLERK: Document marked for identification as Plaintiff's Exhibit 17.

****

MISS THOMPSON: Your Honor, I would like to move the admission of the decision in evidence, the Uniondale School decision.

THE COURT: First, I don't think it is proper to move the admission of the decision into evidence because it happens to be in all the books, and secondly, it is a public record, it doesn't have to be in, just give me the citation, I have the supplement inside, and I will turn to the page.

MISS THOMPSON: All right.

MR. JASPAN: What is the citation?

MISS THOMPSON: 314 New York Sup. 2d 266, September 3, 1970.

MR. JASPAN: Who was the Judge?

MISS THOMPSON: Daniel G. Albert.

THE COURT: He is a former State Senator, he knows what he is doing.

Go ahead.

BY MISS THOMPSON:

Q Mr. Nickerson, you have been responding to my question with regard to the action which you became aware of concerning housing at Mitchell Field, and you described a reaction to senior citizen housing in the Santini tract.

Did you also become aware of any reaction to low-income housing as such at Mitchell Field?

A Yes. I can't pinpoint precise instances, but there was opposition to low-income housing generally in the County, and specifically at Mitchell Field.

Q What form did that opposition take?

A It was reflected in what I read, and in the remarks of public officials.

Q In the remarks of which public officials?

A I just can't recall.

Q In your opinion, what was the reason for the opposition to low-income housing?

MR. HYMAN: Objection, your Honor, he has not been qualified as an expert, no preliminary ground has been laid --

THE COURT: I will sustain the objection.

MR. HYMAN: Mr. Nickerson cannot give --

MISS THOMPSON: I think the Court is

entitled to Mr. Nickerson's opinion, he was County Executive for nine years, and on the scene for nine years.

THE COURT: I cannot allow Mr. Nickerson's operation of his mind, I will allow you to go so far, and no further. I don't think this is admissible at all.

I don't mind making a mistake, but to take it this far --

MISS THOMPSON: Your Honor, I would like to proffer the fact that if Mr. Nickerson were asked what his opinion was as to why low-income housing was opposed in Nassau County, he would indicate both that people in Nassau County feared the impact of low-income housing, and were also afraid of an influx of black residents.

I further proffer the fact that if Mr. Nickerson were asked what his opinion were, he would indicate that the citizens of Nassau County with whom he was familiar equated low-income housing with housing for minority citizens --

MR. HYMAN: The Government moves that the statements made by Miss Thompson be stricken.

In order to have an offer of proof, the

statement should be made in writing to you, under the Federal Rules, and with the preface that if certain questions were asked, these questions would be answered in this manner. The manner in which this record is being made is completely erroneous.

THE COURT: In any event, it wouldn't be admissible.

All right.

BY MISS THOMPSON:

Q During the time that you served as County Executive, were you aware of any urban renewal project which were under way in Nassau County?

A Yes.

Q What urban renewal projects were you aware of?

A I was aware of urban renewal projects in Hempstead, Inwood, Rockville Center, Roslyn, Glen Cove. There were others, but I can't recall where.

Q Are any of the areas which you have listed areas of minority concentration?

A Yes, most of them are -- All of them are, I believe.

Q Did you become aware of any impact of the urban renewal projects on minority citizens living in those areas?

MR. JASPAN: I object to that question,

* * *

into evidence.

Do you have any objection?

MR. JASPAN: No.

THE CLERK: Plaintiff's Exhibit 18, previously marked for identification, now marked in evidence.

BY MISS THOMPSON:

Q Do you recall whether under your administration in the County there were surveyed sites on which low-income housing could be constructed?

A Yes.

Q Do you have any recollection of what sites the County found?

A I don't, I know there were little bits and pieces that my deputy and others looked at, but I can't remember their precise location. We also thought in terms of County-owned land, of whether it would be feasible to have housing on that. We looked, as I recall it, at Bethpage property where the sanatorium was, the tuberculosis sanatorium was. Beyond that, I don't recall.

Q Do you recall --

MR. JASPAN: Plainview.

THE WITNESS: Plainview, excuse me, of course, it shows how long I have been out of

office.

Q Do you recall whether your Deputy found any large tracts of land in the County on which low-income housing could be developed?

A No, there were none that were zoned for housing for low-income housing that were available.

Q You indicated earlier that you had become aware of some opposition to low-income housing at Mitchell Field as the result of conversations with public officials; did you not?

A Yes.

Q Do you recall the reasons which were advanced by those public officials as to why they oppose housing at Mitchell Field?

MR. JASPAN: I would like to know, if your Honor pleases, the date, with whom he spoke, --

THE COURT: Yes.

MR. JASPAN: (continuing) -- and what was said by each.

THE COURT: Yes.

A I can't recall the specifics of it, I do recall there was a general feeling on the part of the Supervisors --

MR. JASPAN: Excuse me, Mr. Nickerson.

I move that that be stricken.

THE COURT: Yes.

That is not responsive at all.

THE WITNESS: Your Honor, I can't focus on a specific conversation --

THE COURT: All right.

THE WITNESS: I do remember in general hearing from the Supervisors --

MR. JASPAN: I object, if your Honor please, Mr. Nickerson --

THE COURT: That is not telling me anything.

MR. JASPAN: I didn't know where he was going to stop.

THE COURT: All right.

Gentlemen, we will recess for lunch.

2:00 o'clock, please.

(A recess was then taken until 2:00 o'clock.)

End of AM

AFTERNOON SESSION

EUGENE NICKERSON, called as a witness, having been previously sworn by the Clerk of the Court, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MISS THOMPSON (Cont'd):

Q Mr. Nickerson, when the Mitchell Field Development Corporation was established, was it given all authority for planning for the development of Mitchell Field?

MR. JASPAN: I just didn't hear the question.

(Question read.)

MR. JASPAN: That is asking for a legal conclusion.

THE COURT: You better rephrase it.

BY MISS THOMPSON:

Q Mr. Nickerson, when the Mitchell Field Development Corporation was established, did you continue to play a role in the planning of Mitchell Field?

A Not in the actual drawing of the plans, no.

My recollection is that we had a letter agreement or contract with the Mitchell Field. At any rate, there was a piece of paper which set forth what their obligations

were, which was to plan the Mitchell Field and to then implement that plan if approved by the county officials.

Q In the Mitchell Field Development Corporation ever present a plan to the county officials for their approval?

A Well, what has already been marked as the initial piece of work, they presented to us. It is Plaintiffs' Exhibit 14, which I have identified.

Q You are referring to the --

A It is entitled "Nassau Center."

Q Did you have occasion to give it your official approval?

A I don't think this was ever -- I don't think that this was ever formally acted on by the Board of Supervisors. I think it went to all of them, yes, it's addressed to all of them, to the County Executive and members of the Board of Supervisors.

Q Did any of the members of the Mitchell Field Development Corporation ever have any discussions with you with regard to their attitudes toward housing at Mitchell Field?

A Yes.

Q Do you recall ever having met with any of the members of the Mitchell Field Development Corporation

MR. BELLMAN: Your Honor, we are going to continue with the examination of Arthur Kunz.

A R T H U R K U N Z, having been previously sworn as a witness, resumed the stand and continued to testify as follows:

DIRECT EXAMINATION

BY MR. BELLMAN:

Q Mr. Kunz, when we suspended with the taking of your testimony on Monday, we were discussing the issue of the amount of vacant land in Nassau County, and your testimony was to the effect that overall, there was about ten thousand vacant areas which constituted three or four percent of the land of Nassau County.

There was some discussion about land near the water or estate land. Could you explain to the Court what is estate land.

A Primarily this is your land on the North Shore which is zoned for low density housing, one acre or more, and a fair amount of that is usually used for recreational or institutional purposes. It isn't really available for intensive development.

Q Could you on Plaintiff's Exhibit five, this large map, could you come over here and point out to the

Court the areas you are talking about when we're talking about estate land. You could write across this, the area of estate land and those sections.

A There is an area in here.

MR. BELLMAN: Let the record show that the witness is drawing a line in black on Plaintiff's Exhibit five.

Q Could you write --

MR. BELLMAN: And that he's making a cross mark in the area. Out here could you write "estate land," and draw arrows to the areas in question?

(Witness complies.)

Q It's true, is it not, that in these areas individual owners have accumulated numerous acres of holdings, is that correct?

A That is correct.

Q And it's a relatively -- an area of relatively low density of development, is that correct?

A All that is, yes.

Q Is it also exclusive single family?

A Virtually all single family, yes. And as I said before, institutional and recreational.

Q Now, Mr. Kunz, approximately how many acres of

vacant land, of the ten thousand acres we're talking about, would be located in the estate areas?

A I would estimate around half.

Q About five thousand acres?

A Yes.

Q Are these areas relatively removed from the center or core of Nassau County?

A The majority of them are because they are up near the shoreline area, to the Northern portion of the County.

Q Are there the kinds of services available in these areas that would render development of multi-family and publically assisted housing feasible?

A Primarily, this would be contrary to the overall plan which called for this area to be low density because the area is of rougher topography, does not have for the most part sewer service or in some cases not even public water supply.

Q You said it would be contrary to your plan. Are you referring now --

THE COURT: Is that undeveloped land we're talking about?

THE WITNESS: No, this is developed at low density or partially undeveloped.

THE COURT: You mean there are home s-

THE WITNESS: Homes on one or more acres. Some of the zoning --

THE COURT: Are these one or more acres contiguously developed or is there maybe let's say a hundred acres or five hundred acres that are not developed at all?

THE WITNESS: There are a few large pieces that are still an estate holding, but the whole area is pockmarked --

THE COURT: You mean held privately?

THE WITNESS: That's correct.

THE COURT: Not by any Government or corporation or by the County?

THE WITNESS: There were some institutions in there.

THE COURT: What kind of institutions would that be?

THE WITNESS: A state institution at Old Westbury, C.W. Post College, New York Institute of Technology --

THE COURT: In any event, the area around which you drew the black marks is tremendously larger than the area of Mitchell Field.

THE WITNESS: That is correct.

THE COURT: Proportionately, would you say -- at least one area that you have drawn is at least thirty times larger.

THE WITNESS: Right.

Q The point is, Mr. Kunz, that is not vacant necessarily.

THE COURT: I didn't say it was. I want to make sure I understand what we're talking about.

THE WITNESS: There is a low density --

THE COURT: I thought you might want to take that land away from somebody and start using that too.

MR. BELLMAN: To the contrary.

THE COURT: It's very difficult for me sometimes to grapse these things or understand why you do it in one place if you can't do it someplace else.

Q Maybe it would help --

THE COURT: In other words, you want to keep topography as it is, too, you wouldn't want to destroy that. We used to call them green belters on Staten Island, I don't know what they call them anyplace else.

BY MR. BELLMAN:

Q And you mentioned that in your plan you recommended that this be -- these areas be kept low density.

A Yes.

Q Are you referring to the Nassau, Suffolk --

THE COURT: More than likely he had no control over them, he would have to recommend them, if they are privately owned and institutionally owned how could he recommend anything else?

THE WITNESS: It could be possible.

THE COURT: For condemnation purposes.

THE WITNESS: It could be recommended that they be rezoned for high density use, more intensive use --

THE COURT: Assuming you do that, could you make the persons who owned the land, cause them to conform to your zoning or could they retain it as they wish?

THE WITNESS: It's possible. One estate village that I exclude from that borders the Long Island Expressway and chose to develop from estate land to higher density and non-residential use, so it can be done by local

decision if they fell that they are in this corridor area, they can change the character of the land.

THE COURT: The developers can come in and do it if they wanted to?

THE WITNESS: The municipality has the power.

THE COURT: They can give us the grid-iron type home, if you like that, or the block type or something else.

THE WITNESS: And destroy everything else, but nobody could care too much about that. You wouldn't want to do that, would you?

THE WITNESS: For the most part, as I said, it's been recommended to retain those areas that are predominantly low density now in low density.

Q In light of the Judge's questions, it's true, is it not, that the plan, the comprehensive plan is a guide-line for development in Nassau and Suffolk County, is that correct?

A Yes.

Q The Commission doesn't have power to cause rezoning?

A No, it doesn't.

Q But the plan itself would be functional, you hope, in terms of convincing communities to undertake tational development?

A That's correct.

Q And to undertake development that would be in accordance with a regional approach to planning.

A That's correct.

Q You made reference --

THE COURT: Personally, I think that is very intelligent planning of a community, absolutely intelligent. I have no problems with it whatsoever. We may not agree what the planning may be, but the idea is it's very intelligent to plan it and not let the gridiron system take place.

Q Take it a step further, one of the reasons for the need of regional planning, is it not, that with the system of individual communities having zoning power they would plan only for their own local needs, isn't that true?

A That's correct.

Q And this is to give them some kind of guideline toward a regional approach?

A Their decisions might affect the entire region, that's

correct.

Q When you said plan, you were referring to the comprehensive development plan, Plaintiff's Exhibit 1, is that correct?

A Right.

Q Now, just to make your testimony clearer, when you say the estate lands were recommended to be zoned at low density, you were referring --

A Remain at low density.

Q To remain at low density, you were referring then to the land use plan map in Plaintiff's Exhibit one, were you not?

A That's correct. The density categories of rural or low density are the ones that I referred to on the legend, which would encompass the area roughly as I have shown it on the map.

Q On Plaintiff's 1, in order that the record be clear, could you draw in with the black pen the areas of estate land that you make reference to?

A Yes.

(Witness complies.)

Q Would you write again out here in blue, write, "estate land," and draw arrows to the appropriate areas?

(Witness complies.)

Q If you could come back to the larger map, Plaintiff's Exhibit 5, would you use a red pen at this time and mark in generally the center core of the County that you had in mind when you were recommending more dense development and multi-family development?

A The dense core is more or less through this area here, virtually along the main line of the railroad, Expressway, parkway systems.

Q Could you put a red hatch mark and then off to the side put center core?

It's true, is it not, Mr. Kunz, that the Regional Planning Commission recommended that the increased need for multi-family housing and publically assisted housing be met, if possible, within this center core, is that right?

A It's been recommended that we have the highest density uses for employment opportunity primarily within the center core, where the best transportation exists. Not usefully, but if we have a choice between a site here or a site here or here, this should take preference.

Q When you said a site here --

A To the North Shore, to the South Shore --

Q So the preference would be to locate the more dense development in the center core.

A That's correct.

Q Is it true that Mitchell Field is located in that center core?

A Yes, it is.

Q You stated that there were some sites located -- vacant sites in the center core. Could you once again tell me where the major vacant sites are in the center core, aside from Mitchell Field?

A I said primarily they were sites in places such as Jericho and Woodbury that are near the Long Island Expressway, and back in the North Hills and Manhasset area there is vacant land available corridor there.

THE COURT: Are they County-owned or do they have to be condemned?

THE WITNESS: Privately owned.

THE COURT: They would have to be condemned to take them?

THE WITNESS: That's correct.

Q Is it true that the only vacant --

THE COURT: Is that your projection then, you talk about 1785, by the time you get three with all the condemnation proceedings and everything else that went with it --

THE WITNESS: Primarily those sites as

indicated on here are not necessarily for public development, according to the plan. Those sites that I mentioned were for a mixed range of uses, some varity of housing, some open space which could be throw cluster development --

THE COURT: On a zoning basis?

THE WITNESS: That's correct.

Q Is it true that Mitchell Field is the only publically owned significant parcel of vacant land in this center core?

A That isn't used for parking purposes?

Q Correct.

A Yes.

THE COURT: The County does not have any authority to build houses or to even form a corporation, as you testified. Assuming this land you talk about now outside of Mitchell Field was condemned they still couldn't build any houses on it, they would have to sell it to somebody else. How do you condemn land and then sell it privately? It would be a violation of something. From what I know about condemnation, it has to be taken for public

We just got through with our sort of symposium. In any event, whatever it was, we are back on the case again.

BY MR. BELLMAN:

Q Mr. Kunz, you also -- excuse me, I did want to correct one reference in the transcript.

On page 146 you are quoted as having stated with respect to a question about where there were other tracts, "There is a large tract of land in Woodbury and Jericho, in Oyster Bay town and in Port Jefferson, if you take the sand pit area."

That is an error, is it not?

A I clearly said Port Washington, not Port Jefferson.

Q So the record is clear on that. Your testimony was also that aside from these larger tracts of vacant land, there are smaller parcels, is that correct, that are vacant in Nassau County?

A Yes.

Q What do you have in mind when you say there are smaller parcels?

A I am talking of a few acres that are scattered throughout the builtup section of the County. These are still available. One that has been held out for many years or one that was difficult to build through

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access problems or something else, that totals up -- I don't know the figure any longer, but we did find a significant number of those in 1966 when we did that extensive land use.

Eventually they end up with a cul de sac and a half-dozen homes on them, usually, but they are scattered and existing in most residential areas.

Q Is it feasible to look to the scattered small parcels as sites, potential sites for the development of low cost housing in Nassau County?

A They are certainly a possibility, but they are not an easy possibility to build on because you usually find you have single family homes completely surrounding some of these very small sites, and I don't have to tell you how difficult it is to propose a housing project on something of that nature.

(continued on the next page.)

Simon folls.

Q In other words, these small parcels are surrounded by existing single family structures and there would be a potential opposition for the community to the interjection of low cost housing into these areas?

A I am sure there would be.

Q To your knowledge have there been any proposals by any of the town governments or village governments -- town governments in Nassau County for the construction of subsidized housing on any of these specific vacant sites?

A There were proposals made by the Town of Hempstead a few years ago for scattered site housing proposals.

Q Did that involve designation of specific sites?

A I believe so.

Q What occurred with respect to that recommendation?

A To the best of my knowledge they weren't implemented.

Q Now Monday we also had some discussion with respect to the increase in the black population in Nassau County.

I would like to hand to you Plaintiff's Exhibit Four, which is Volume II of the statistical study. This is on color and race. And I would like to ask you,

Mr. Kunz, if you could specifically give the Court the figures as to the black percentage of the population in Nassau County in 1960 and 1970, and give the page of Plaintiff's Exhibit Four where that information is located.

A Page three, racial composition, 1960 -- you asked black population in '60 and '70?

Q Yes.

A It was 3.0 percent in '60 and 4.6 percent in '70.

Q Now, could you give the Court the absolute increase, the number of black citizens -- the increase in number of black citizens between '60 and '70, and the page where that is located?

A That is on page 31, Table Two, 31, the increase in black population '60 to '70 was 26.329.

Q And now what is the total black population in Nassau County?

A At the present time 65,679.

Q What is the percentage increase of the black population from '60 to '70?

A 66.9 percent.

Q And now, is that all given in Table Two?

A It is all in Table Two, right.

Q Now, how does the percentage increase compare for black population -- compare with the percentage increase

for the white population in Nassau County?

A It is almost ten times as much.

Q What was the --

A The white is 7.8 percent.

Q Now, you also on Monday testified to the increase -- then that the growth of the black population was primarily in areas of minority concentration?

A That is correct.

Q Now, would you tell the Court on what page of Plaintiff's Exhibit Four you can find the information to support that statement that the growth of the black population was in concentrated areas.

A The chart on page 18.

Q What does the chart on page 18 indicate?

A It indicates that of the ten communities today that have the largest amount of black population eight of those in 1960 were in the top ten in terms of black population.

Q Now, in order to give the Court some idea of what we mean by the growth of particular areas in terms of their increase could you for example give the Court the black population increase in say the top three communities, Hempstead Village, Roosevelt and Freeport Village? In other words, what their populations were in 1960 and what they are in 1970.

MR. JASPAN: What page?

MR. BELLMAN: 18.

A Page 18 just has the increase. Is that acceptable?

Q Yes.

A The increase in black population in Hempstead Village for example is 6,517 or 85.3 percent.

Roosevelt did you ask? Oh, I am sorry, in other words then it goes from seventy-five ninety-four to 14,111.

Q Now give the other two towns.

A For Roosevelt? It went from 2,241 to 10,135 which is a 352 percent increase.

Q Now, could you tell the Court approximately --

MR. BELLMAN: Strike that.

Q You stated that there were over 65,000 black people living in Nassau County today.

Could you tell the Court how many or what percentage of that total figure resided in the top ten villages or towns which show concentrations of black population?

A Well, more than two thirds of all of the blacks live in ten communities out of the 125.

Q Now, could you step over to Plaintiff's Exhibit Five once again please.

(Witness leaves stand.)

Q (continuing) Now Plaintiff's Exhibit Five indicates those communities which have the greater concen-

tration of black residents? Is that correct?

A That is correct.

Q And how is that indicated?

A By one dot equals 100 people.

MR. BELLMAN: You will have to speak a little louder.

THE WITNESS: One dot on this map equals a hundred black persons.

Q Now, we have the situation where that community of Uniondale indicates a fairly large minority population and those dots on this map are spread across the entire area designated as Uniondale.

Mr. Kunz, can you tell the Court whether in fact the minority population of Uniondale resides throughout Uniondale or whether it is located in a particular portion of the community?

A The majority, according to our block statistics from the census, are in the southeast portion of the community.

Q Could you draw in in red -- make it a full red area. Fill it in.

(Witness complies)

A Yes.

Q Now, that heavy red area is where the

minority population of Uniondale is concentrated? Is that correct?

A Yes.

Q Now, with respect to the community of Rockville Centre, that also shows some concentration of minority citizens.

Could you show the Court in red where the Rockville Centre minority population is located?

A Yes.

(Witness complies)

MR. BELLMAN: The record should show that the witness has marked in heavy red an area to the west central part of the Rockville Centre area.

Q Now, the community of Freeport also shows a heavy concentration of minority citizens.

Are they scattered throughout the community or are they also concentrated?

A Mostly in the east and northeast.

Q Could you mark them in heavy red?

A Yes.

(Witness complies.)

MR. BELLMAN: And may the record show that the witness has marked an area that

borders on Roosevelt which shows an extremely heavy minority concentration.

Q Is that correct?

A That is correct.

Q Now, with respect to the community of Elmont which was one of the communities you mentioned the other day as showing a heavy concentration, Mr. Kunz, again is the minority population concentrated in that area or dispersed throughout that area?

A Not to the same extent but the majority is in the area to the north central portion of the community right here (indicating).

Q With respect to the community of Long Beach are the minority citizens also concentrated in any particular area of that community?

A Our figures show that most of them are in the central portion of the community in the area that is now undergoing urban renewal.

(continued on the next page.)

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Q Now, as to Inwood, another community you mentioned, are they dispersed throughout the community in Inwood or is it concentrated?

A They are mostly dispersed throughout the area.

(Witness resumes stand.)

Q Now, I would like to have you refer to Plaintiff's Exhibit Eight, which is Volume Six of the census materials, the volume dealing with income, and you stated in your testimony on Monday that there is a map attached to that volume which shows pockets of poverty.

Now, could you advise the Court as to how the pockets of poverty are indicated on this map?

A These are the census tracts that have more than ten percent of the people living in them receiving income classified as below the poverty level.

Q Now, on that map could you tell the Court which of the communities in Nassau County -- excuse me one second, those communites that come within that category are marked in dark red?

A In dark red.

Q Now, with respect to Nassau County, can you tell the Court which of these communities where these entries are marked in heavy red, pockets of poverty, are located?

A The tracts are in the communities of Inwood, Long Beach, Freeport, Lakeview, Hempstead, New Castle and Glen Cove.

Q Now, taking them individually starting with Inwood, would that be an area of minority concentration?

A Yes, it is.

Q The red marked tracts in Long Beach, do those coincide with the minority concentration you marked on Plaintiff's Exhibit Five?

A One of the tracts does. The other one coincides with an area of elderly poor.

Q As to Lakeview, does that coincide with the minority population?

A Yes, predominantly black. The same with Hempstead and the same with Freeport. The same with New Castle and also Glen Cove.

Q So that all of the major pockets of poverty in Nassau County or almost all of the major pockets in Nassau County would be areas of minority concentration? Is that correct?

A That is correct.

Q Now, the darker -- what is that brown or beige color --

A Orange.

Q (continuing) -- orange on the map, that would be the next category of relative absence of wealth, is that correct?

A Yes.

Q What does that designate?

A Between six and ten percent of the families in there have an income below poverty level.

Q Will you tell which of the communities in Nassau County show such a concentration of poverty?

A Again Inwood and Long Beach and Freeport are repeated along with Hempstead.

And in addition we have Elmont, Island Park, Rockville Centre, Roslyn Heights, Manhasset, Port Washington, Locust Valley, Jericho and one tract in the Massapequa area plus West Amityville.

Q Now, to what extent is there a correlation with respect to that category between minority populations and pockets of poverty or whatever the second category should be called?

A The Massapequa area and Island Park area have virtually no black population.

All the others do have significantly black population.

Q Now, you testified Monday as to areas which showed concentrations of housing deterioration. And to save

some time you mentioned, I believe, the communities of Inwood, Long Beach, Freeport, Hempstead, Elmont and Roosevelt? Is that correct?

A That is correct.

Q It is true, is it not, that those communities also show a correlation between housing deterioration and a concentration of racial minorities?

Is that correct?

A That is correct.

Q Do they also correlate with the areas which show relative poverty?

A That is correct.

Q Mr. Kunz, you stated that there was a need for -- a current need as set forth in the master plan for approximately over 15,000 units of publically assisted housing in Nassau County. Is it possible to determine --

MR. BELLMAN: STrike that.

Q What percentage of that need of 15,000 plus would be a need currently which is a need being faced by elderly citizens in Nassau County?

A We have estimated at least a third of that was for the elderly.

Q Now, if you eliminate from this figure of approximately 5,000 units for the elderly and deal with the

10,000 units that are needed for families, that is publically assisted housing, could you tell the Court what percentage of that need would be a need currently faced by minority citizens?

A I would say the estimate, it is about half since our field observations showed that many of the substandard units were occupied by minority groups.

Q Now, do you have any information as to the extent of overcrowding in housing in Nassau County?

A The material that is summarized in this census data is not as yet published by our agency but it is available as it has been printed for at least a year, and there are figures on a community by community basis, and the same communities show up in the over crowded areas.

Q Which same communities? The six --

A That is correct. And the highest one being I guess in all of Nassau County, Roosevelt, with a 10.5 percent of all housing in that community we classified as overcrowded in 1970.

THE COURT: All right, we will take a recess.

(Short recess.)

(continued on the next page.)

* * *

compelling jurisdiction for that racial discrimination, the effective racial discrimination.

In order to do that, your Honor, it is necessary to put in testimony on statistical patterns and how --

THE COURT: We have it.

MR. BELLMAN: That's what we are doing. I don't think we are dragging it out, your Honor, and it is not our intention.

THE COURT: I say you are almost finished with this witness.

MR. BELLMAN: That's correct, a few more questions.

THE COURT: All right.

BY MR. BELLMAN:

Q. Mr. Kunz, you have been following the housing problems and patterns in Nassau County for some time now.

Do you have an opinion as to why there has developed a pattern of concentration of minority citizens into certain areas of Nassau County.

MR. JASPAN: I object, if your Honor pleases.

THE COURT: Sustained.

MR. BELLMAN: I take exception to that ruling, your Honor.

THE COURT: He is not the best judge of that at all.

Q Now, you stated on Monday that the bi-county master plan proposes housing uses at Mitchell Field. Would you tell the Court why the bi-county commission proposed such uses in its master plan for Mitchell Field?

A Primarily, because we classified it as a center of activity. In other words, there were so many housing units specifically multiple housing units that are going to be necessary to serve the existing population of the county of over the next twenty years which is roughly our projection period.

Now, within that time period, we also felt that to provide this new housing we should go into the areas that have an existing services already.

For example, transportation, water, sewer and commercial facilities nearby, rather than working up into the lower density areas or along the shore line areas.

So that Mitchell Field was identified on the overall plan as one site for a major center of activity, so that since there was construction proposed of cultural and educational facilities, that housing facilities could easily go along with this because of the employment

opportunities in the location because of the potential for transportation.

And we felt at the same time, developing in this area can take some of the pressure off some of the low and moderate density areas that exist in other parts of the island.

THE COURT: Tell me your conclusion as far as your planning commission and your colleagues, you were not influenced at any time by the fact that -- your considerations were not brought about by the fact that you may have believed there was racial discrimination that would cause you to want low cost housing or any type housing in Mitchell Field, that was not in your consideration at all, was it?

THE WITNESS: The recommendations for new housing primarily in the multiple area, and multiple housing generally should be located where you have services and jobs and transportation and utilities available.

THE COURT: You were concerned with the density concentration and then relieving density in other areas, whether it be with

low cost housing, poverty areas, or high cost areas, wherever, as long as you could relieve that density and bring it to a central area; is that what you were concerned with, for the betterment of the community itself? You were not concerned with a certain faction only at the time, were you?

THE WITNESS: We are saying --

THE COURT: You can answer all his questions later, but I am still the fellow who makes the decision here, and you can testify all you want the way you want to, but I want to know was your main concern whether or not you were going to move poor people to Mitchell Field or was your main concern the betterment of the community itself, and if low cost housing were to be placed there that would be good for the community -- was that your concern?

THE WITNESS: Mainly our concern was to provide the housing where it was best suited.

THE COURT: All right.

BY MR. BELLMAN:

Q And also your concern was to respond to needs in Nassau County, is that correct?

THE COURT: Don't tell him what it was.

Q Was one of your concerns --

A To respond to the housing needs in the County, of course.

Q And the low income housing?

A Total housing.

THE COURT: There is no disagreement on that.

A There is a demand for all types of housing, that's correct.

Q With respect to your recommendation for inclusion of housing units at Mitchell Field, did you also take into consideration the fact that what was being proposed was a County civic and cultural center?

A Yes.

Q How did that fit into your recommendation?

A Well, there are a number of job opportunities and cultural opportunities created by this concentration of recreational, entertainment and increase in occupational possibilities, so that there is a direct relationship between the jobs and housing.

For people who would like to live and work in an area and not have to use the private automobile, this is

the only opportunity in some of these centers of activity, such as Mitchell Field, that this would be possible.

THE COURT: Let me ask you this, at the time you were making -- that you formulated this planning brochure that you have here, was your board at any time concerned with whether or not there were laws to effectuate the planning that you were considering?

THE WITNESS: Oh, yes, because we made a number of --

THE COURT: Taking it one step further, were there people there who were involved, let's say in the executive board of the County, the county executive himself, plus other people, who discussed the means of effectuating such a plan?

THE WITNESS: Yes, your Honor. It was in a publication in which I believe was not accepted for evidence the other day.

There were 22 recommendations for laws and implementation of the housing --

THE COURT: Which would have been required?

THE WITNESS: That's correct. One

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Q Mr. Kunz, do you have any information as to the current zoning that exists for Mitchell Field?

A It is a combination of residential zone, edu-cultural zone which allows the University construction and some of the public facilities, and industrial and commercial.

Q In order to effectuate any of the plans currently under consideration for construction of a hotel, for example, or cultural centers, or housing, would it be necessary for the Town of Hempstead to rezone Mitchell Field to make possible such construction?

A For most of them, yes. There is some industrially zoned and commercially zoned land, as I stated before, so, for example, an office building could be built in a zone set aside for commercial space.

There may be a difference in height limitations and so on. The housing facilities could be built in roughly sixty by a hundred lots but any increase --

Q Such single family housing would be feasible would it?

A This was not recommended as a use because there is not that demand for small lot- single family as there would be for some other type of housing.

Q Now, there have been numerous questions raised concerning the power of the County to respond to the

low cost housing problem.

First, it is clear is it not, that the County itself cannot build housing at Mitchell Field; is that right?

A With the defeat of that amendment, yes, that's correct.

Q Are there other kinds of steps that a County could take which would lead to the promotion or possible construction --

THE COURT: I will sustain the objection.

MR. JASPAN: Thank you.

MR. BELLMAN: I have not finished my question.

THE COURT: I have to sustain it. You are asking him what the County can do. He is not an official.

Q Has the Regional Planning Commission made recommendations, public recommendations with respect to what Nassau County or Suffolk County should be doing with respect to promoting construction of multi-family --

MR. HYMAN: Objection as to Suffolk County, your Honor.

MR. BELLMAN: Strike Suffolk County.

Q As to what Nassau County could be doing

to promote construction of publically assisted housing?

A It doesn't make any difference. The recommendations were the same for both counties and they are included in the report of what the counties per se can do.

Q Among these recommendations, was reference made to creation of housing corporations to sponsor subsidized housing?

A Yes.

MR. HYMAN: Objection, your Honor, leading.

THE COURT: He has answered it already.

MR. HYMAN: He is giving him the answer to the question, your Honor. The question should be what if anything would the recommendations be.

MR. JASPAN: My objection --

MR. BELLMAN: I could do that, but I want to save time.

THE COURT: Yes.

MR. BELLMAN: There are 24 recommendations, and I am not really concerned with all of them.

THE COURT: In my latitude of discretion I allowed it.

MR. JASPAN: I want to make the point

anyway for the record. Mr. Bellman is asking of this witness is his conclusions of law.

In the first place, he is not a lawyer -- am I right?

MR. BELLMAN: I am asking what the recommendations were?

MR. JASPAN: What is the relevance of the recommendations? They have recommended changes in the law. This Court is not going to change the law.

THE COURT: Definitely not.

MR. BELLMAN: I have a right to ask him --

THE COURT: I keep up with it. I was really going to say something else, but I am not going to.

MR. JASPAN: If they made recommendations for legislative acts by the --

THE COURT: You don't have to explain it to me, I understand it.

BY MR. BELLMAN:

Q Can you answer the question with respect --

THE COURT: The recommendations --

A They were not all law, your Honor. The one I mentioned was, of course, a law change, but there were recommendations for having cooperative arrangements with

housing agencies. For example, the County has a housing coordinator. This was a recommendation that was implemented by Nassau County, things of that nature, how the County can get involved in the housing area are summarized in that report.

MR. JASPAN: Public housing recommendation number two, which Mr. Bellman asked presumably in good faith about, and which this witness answered, states -- listen to the way the recommendation comes out to see whether this is an appropriate line --

MR. BELLMAN: I would object --

MR. JASPAN: I am raising an objection. Now you have to listen to me for a minute.

THE COURT: Now wait a minute.

MR. JASPAN: I have a right to be heard, until you tell me that I can't be heard.

THE COURT: I just told you. You have no right to point a finger at a lawyer, as I would not in any way raise my voice to a lawyer. In any event, the quieter I get the more you should beware.

You and I have been friends, Mr. Jaspan,

* * *

the dignity of the Court.

MR. BELLMAN: I would take exception to Mr. Jaspan indicating that I mislead the Court. That is not my intention and I don't think his comments were pertinent to my question which goes to the recommendations with respect to the creation of housing corporations to sponsor subsidized housing.

Q Did the Bi-county Commission make such a recommendation?

A Yes, they did.

MR. JASPAN: I object, if your Honor pleases. It is not relevant to this case, in any event, whether they made such a recommendation.

THE COURT: It is in the book, in any event.

MR. BELLMAN: Then we will move the admission of the book. It was excluded.

It is identified as Plaintiff's Exhibit Two marked for Identification. We move its admission to save time.

THE COURT: Mark it in evidence. It is not going to change the case.

THE CLERK: Plaintiff's Exhibit Two previously marked for Identification now marked in evidence.

(So marked.)

MR. JASPAN: Now he can read from it. See, it is in evidence and now he can read from it.

THE COURT: So what?

MR. JASPAN: I thought you wanted to speed this trial.

THE COURT: We will speed it up, don't worry.

BY MR. BELLMAN:

Q Has the County of Suffolk responded to the recommendation with respect to --

THE COURT: Sustained. I don't care what Suffolk has done. I have enough trouble with Nassau.

MR. BELLMAN: I do think it is relevant, your Honor.

THE COURT: Take an exception. You are protected on the record.

MR. BELLAMN: Let the record show that the witness would have been asked concerning

the creation of a housing corporation in the County of Suffolk, and he would have responded that there is a group called the Suffolk County Housing Development Corporation which cooperates with the State agency known as the Urban Development Corporation.

THE COURT: They may have different county laws, too, which I don't know about. I don't presume to know all the county laws of all the counties in the State of New York.

I presume to take judicial notice that there may be laws affecting such things in the State of New York, but I am not presumed to know them all.

MR. BELLMAN: Let me expedite this.

Q Is there, in your opinion, an obligation on the part of the County in order to promote --

THE COURT: Sustained.

Q I will rephrase it. Can a County in its effort to promote subsidized housing use its planning powers to accomplish that end?

A Its planning powers, certainly.

Q Are there other actions that a County may take to promote -- short of change of law and passing of

legislation -- to promote the construction of low cost housing?

A Certainly. They can provide housing to a municipality that has the power to do it, or --

Q Provide land, you mean?

A That's right. Or they can build on their own public institutions such as a hospital or a college or other type of institution; that's specialized housing.

Q Is it fair to say that there are a variety of techniques and tools that a county may use to respond to a low cost housing problem?

A Yes, there are.

Q On Monday you testified that there was considerable opposition to the recommendations with respect to the inclusion of housing at Mitchell Field, as set forth in the bi-county plan.

Mr. Kunz, did you attend meetings after the issuance of that plan in Nassau County?

A Yes. We had --

Q Go ahead.

A We had public hearings and informational meetings --

MR. JASPAN: We have been all through this.

THE COURT: Yes.

MR. BELLMAN: I want to bring out some more information with respect to it, your Honor. It will be quick.

THE COURT: He can't give us much more. He has run the entire gaunlet.

MR. BELLMAN: If I can have two more minutes?

THE COURT: It was 10 minutes this morning, and I recessed.

MR. BELLMAN: My questions did not take more than 10 minutes, your Honor. It was the objections that took up the time.

May he answer, your Honor?

THE WITNESS: I have forgotten the question.

Q Concerning the meetings you attended, how many meetings did you attend after the issuance of the plan?

A Totally?

Q Yes, in Nassau County on the subject of the plan?

A Almost 100, I'd say.

Q What types of meetings were these, where were they held?

A Municipalities, civic associations, business groups,

educational groups; whatever group was interested enough to want to learn more about the objectives of the overall plan.

Q Over what period of time would these meetings be held?

A The plan was released in the summer of '70 and the informational sessions continued for about the next year and a half.

Q Do you know whether Nassau County is in fact making land available at Mitchell Field to the Town of Hempstead or to the housing authority for construction of senior citizen housing?

MR. JASPAN: I didn't hear that question.

(Question read.)

THE WITNESS: I'm not sure. It was discussed. I don't know the status of it.

MR. BELLMAN: I have no further questions.

(continued on the next page.)

* * *

Q To get topthe point, Mr. Kunz, when you were being interviewed by me, didn't you have a point of view about what could be done in the central business areas of some of these communities, like Hicksville and Freeport?

A That's right.

Q Why don't you tell the Court what you told me.

A We recommended that these older centers of activity be sites for new commercial development, apartments and other higher density uses, because the services are already there.

If we are improving the road network and the public transportation, we already have the sewers and water, we feel that these should be the places of new activity, rather than working out on new land.

In other words, within Nassau and Suffolk, these older areas should have a greater amount of concentration; that's the first part of our plan, the centers plan.

Q The potential exists for housing in those areas, does it not?

A That's correct.

Q And a potential exists for housing of all types, low-income, middle-income and --

A All types.

Q And if we have a problem with low-income housing, we could put it into these places in Hicksville and in Freeport

and these other areas where services do exist?

A Hopefully in Hicksville, but all hell broke loose when it was proposed.

Q I didn't ask you that. All hell can break through at any place. You are talking as a planner. You tell us to put it in Mitchell Field. Do you wishdraw it because all hell might break loose?

A No.

Q Why do you withdraw it in Hicksville or any other place?

A I am strongly opposed to the decision made that would exclude housing, because I think downtown Hicksville is an ideal place.

Q You have not said that before?

A I am saying it here, there it is.

Q How many more besides Hicksville and Freeport?

A On the plan, there is indicated about a dozen or more major centers on the Brown circle in the plan.

Q So we are not looking for little pockets of land, we have a dozen centers where we could build houses for low income people, subsidized housing for middle-income people, and for people in any other class.

A Such as downtown Hempstead urban renewals, right?

Q So Mitchell Field isn't the last possible area

MR. HYMAN: I have no further questions.

REDIRECT EXAMINATION

BY MR. BELLMAN:

Q Mr. Kunz, Mr. Jaspan asked you some questions about communities that lost the population. Could you tell me -- I'm referring to Plaintiff's Exhibit 4 now -- is there a list of communities that lost the minority populations?

A Yes.

Q What page does that appear on?

A Page 19.

Q Is there a list of ten communities there that lost population?

A Yes.

Q Which of those communities have you designated as having a large minority population?

A Numer one, Inwood, number three Glen Cove; number four Rockville Center; number five, Manhasset; number six, Oyster Bay. That's all out of the group.

Q Of those five communities that you have just mentioned, could you tell me which of those communities have had urban renewal projects?

A Inwood, Glen Cove, Rockville Center, nothing in Oyster Bay. There house been housing constructed in Oyster

Bay but no real urban renewal. It's proposed in Manhasset.

Q There were some questions concerning the relative ranking of Nassau County with respect to its problem of overcrowding, and on that list came out fairly low. Doesn't that indicate to you that the problem is perhaps manageable in Nassau County?

A Yes, that's correct.

Q There were some questions with respect to the development of other centers where low cost subsidized housing could be placed. You mentioned that the plan anticipated such -- development of such centers. It's true, is it not, that many of these locations that were mentioned would entail, in order to develop them as centers, would entail urban renewal efforts and rebuilding of existing centers, or existing areas?

A Not all necessarily urban renewal as we know it, but renewal through, -- for example, Hicksville was a road improvement project that opened up a lot of land because it took excess condemnation. In addition to that there is opportunity for private renewal and other public action that would make land available, without going through a full-blown urban renewal program, but the end result would be the same.

Q It would require acquisition of land?

A Yes, some public and private actions, but not necessarily going in and applying for a federal urban renewal.

Q It may require demolition of existing properties, correct?

A Usually, yes.

Q Isn't it true that that creates certainly more problem than where you have vacant land such as at Mitchell Field in terms of developing a new center?

A If you have a relocation requirement, you must first find the relocation means before you are able to remove any of the housing.

THE COURT: Isn't that what they do first, they relocate first?

THE WITNESS: Yes. Years ago they didn't, but yes, at the present time it's a requirement.

THE COURT: At the present time they relocate first so there is really no big problem, in other words, they don't start on the problem until they relocate?

THE WITNESS: He was saying, though, to find the land working in a density build-up --

THE COURT: Isn't it a question of reconstructing those areas that are downtrodden

and deteriorated?

THE WITNESS: Yes.

THE COURT: Would you recommend leaving the deteriorated area --

THE WITNESS: No, I testified earlier on this.

THE COURT: We're going to go ahead. Just because he asked the question, you know, you don't have to answer it his way.

MR. BELLMAN: I'm not disagreeing.

THE WITNESS: I answered the question already.

THE COURT: Very good.

MR. BELLMAN: The point I'm trying to make --

THE COURT: Because he asks the question you don't have to answer it his way.

Q I take it there are inherent problems with respect to renovation, demolition --

A I didn't disagree with that.

THE COURT: There are problems in Mitchell Field. We don't have housing associations that can build houses in Mitchell Field, a great problem, a legislative problem.

People have already turned it down. How great can it get. You agree with that, too, don't you?

THE WITNESS: I do.

THE COURT: Absolutely.

Q You don't agree that there are no -- could the Hempstead Housing Authority, for example, build at Mitchell Field?

A Yes.

THE COURT: Could whom?

THE WITNESS: The Town of Hempstead Housing Authority, yes. If the County were to lease or dead, or in other words --

THE COURT: Again, wouldn't that take sort of a legislative action of both sides?

THE WITNESS: As I said earlier it was discussed.

THE COURT: We are right back where we started from.

Q Let's make this clear, Mr. Kunz --

THE COURT: It's clear to me.

Q Take the Santini property, that is proposed for construction of senior citizen housing, is that correct?

A I said it was discussed. I don't know the present status of it.

Q Was it discussed in terms of housing to be constructed by the Town of Hempstead Housing Authority?

A Yes.

Q And would that involve the leasing or selling the land by the County, Mitchell Field land, to the Housing Authority, is that correct?

A I believe so.

Q And action by the Town of Hempstead to make possible the construction of those senior citizen units?

A Right.

Q So that could be done also with respect to family units if the parties involved, the County and the town, were willing, is that correct?

THE COURT: Are you speaking for the town of Hempstead?

THE WITNESS: I am saying they could work in agreement. They have the legislative authority to build that type of housing.

THE COURT: You are not speaking for the town.

THE WITNESS: I am not saying they want to. But they have the authority where the county does not have the authority.

THE COURT: Still that doesn't have

anything to do with the racial problem, whether it's racially inclined or not.

THE WITNESS: No, but they do have the authority to build.

THE COURT: Again we're away from the issue in the case. The issue is whether or not they are being deprived because of racial discrimination, that is the issue in this case.

THE WITNESS: I think the point is --

THE COURT: Presumably.

THE WITNESS: Should they build housing there is the point.

BY MR. BELLMAN:

Q With respect to the bi-counties regional --

THE COURT: We'll take a ten minute recess.

(A recess was taken.)

(Continued on the next page.)

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SS/elc

Kunz-redirect

(Witness resumes the stand.)

BY MR. BELLMAN:

Q Mr. Kunz, you were asked some questions about the recommendations made by the bi-county with respect to Mitchell Field. It was not your recommendation, was it, that all of the housing at Mitchell Field be for low-income families, was it?

A No. We never made a specific recommendation like that.

Q Would your recommendation be for the mixture in the range of housing?

MR. JASPAN: I object. He didn't make a recommendation.

THE COURT: Sustained.

BY MR. BELLMAN:

Q What would be the appropriate --

THE COURT: Sustained. We have been through two days of testimony with this witness on your side.

Q You stated that the Nassau Planning Commission made no recommendation as to the number of low-income units that should be at Mitchell Field. I ask you to review --

A I said there was up to 9,000, total. The Marcom recommendation was incorporated in here?

Q Yes. Will you read the recommendation for Mitchell Field made by the Nassau Planning Commission, which appears on the beginning, under recommendations, which is roman numeral 16, page 16?

A "Recommendations: Construct 9,400 units for housing. If sufficient housing sites are scattered throughout the county, that number could be reduced. Ten percent should go for the elderly, 20 percent for low income families and 70 percent for middle- and high-income families."

In other words, with the 10, 20, 70 formula adopted by the State of New York.

Q You did, although the bi-county commission recommended housing in an area broader than Mitchell Field, you did also recommend housing to be on the site; is that correct?

A The recommendation didn't specify overall, but we showed on the land use plan parcels that you can interpret as being, you know, in and out of the ownership pattern, as shown on that map.

Q You stated that there was opposition to the interjection of housing in any community because of the impact on ratables; is that correct?

A Because of the cost to the school districts, yes, families with children almost always object to them, if

they come in just with single-family housing.

Q Do you know whether the amount of opposition to the interjection of housing increases or decreases or is the same when the housing is proposed for or may be available to black citizens?

MR. JASPAN: That is speculative, if your Honor please. I object.

THE COURT: Yes, it is speculative. Sustained.

MR. BELLMAN: Your Honor, I have a copy of a report prepared by Marcom for the Mitchell Field development corporation, signed by Silas Edmond. I would like to have this marked for identification as Plaintiff's Exhibit 20.

THE CLERK: Document marked for identification as Plaintiff's Exhibit 20.

(So marked.)

MR. BELLMAN: This report deals with Marcom's recommendations for the first phase of development, and I would like to have it introduced in evidence.

MR. JASPAN: I object. There is no basis for it. Mr. Edmond is not Marcom. I

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THE COURT: Step down. Thank you.

(Witness excused.)

MISS THOMPSON: Mr. Liu.

H E N R Y C. K. L I U, called as a witness by the plaintiffs, being first duly sworn, assumed the witness stand and testified as follows:

DIRECT EXAMINATION

BY MISS THOMPSON:

Q Mr. Liu, what is your profession?

A I am an architect and a planner.

Q Would you tell the Court where you received your planning and architectural degrees, and when?

MR. JASPAN: We would agree that he is qualified.

THE COURT: He is qualified.

BY MISS THOMPSON:

Q Mr. Liu, do you presently work for or have a contract with Nassau County?

A I have had contracts with Nassau County and currently there is a contract being negotiated for.

I don't know the precise status of that contract.

Q Are you presently doing any work for Nassau County?

A We are about to begin doing more work for Nassau

County.

Q Have you done work for Nassau County in the past?

A Yes.

MISS THOMPSON: I would like the record to show that plaintiffs are calling this witness pursuant to Rule 43(b).

THE COURT:What is that supposed to mean?

MISS THOMPSON: It means that we are calling him as a non-party witness, who is associated with an adverse party.

THE COURT: You are calling him as your witness. He is on the stand. Ask him the questions.

I am not going to determine whether or not he knows anything or doesn't know anything, unless you ask him questions.

MR. JASPAN: Is she charging that he is hostile?

THE COURT: He is 43(b), whatever that is. I knew what it was in the Army, but I don't know what it is here. What is 43(b)? My clerk doesn't know what 43(b) is.

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Ask him questions. He is a witness. How do I know he is hostile? Absolutely not.

Denied.

Just because he works for somebody does not make him a hostile witness. He has not opened his mouth, except to tell us his name.

BY MISS THOMPSON:

Q Mr. Liu, was there a time when you were employed by the Mitchell Field Development Corporation?

A Yes.

Q How did you come to be employed by the Mitchell Field Development Corporation?

A An officer of the corporation came and interviewed me, and after subsequent meetings they retained me as their consultant.

Q Who was the officer of the corporation who interviewed you?

A Silas Edmond.

Q And when were you retained as a consultant by the Mitchell Field Development Corporation?

A January, 1970.

Q When you were retained as a consultant for the Mitchell Field Development Corporation, were you

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charged to perform any particular tasks?

A Yes.

Q What were those tasks?

A I was asked to develop what in the profession is known as an urban design concept, a preliminary urban design concept with the purpose of locating sites for the initial parcels for development.

Q When you speak of an urban design concept, what do you mean?

A It is a physical design concept based on a given development program, defining the relationship between buildings, the relationship of circulation to location of buildings; the relationship of open space to structures and building heights, set backs, et cetera.

As well as some indication of the manner and timing of phasing of the various stages of the project.

Q Are the elements of an urban design program, which you have just described, the elements of the work which you performed for the Mitchell Field development corporation?

A I don't fully understand the question.

Q Did you perform all the things that you just said, constituting urban design program for the Mitchell Field Development Corporation?

A Urban design concept?

Liu-direct

Q Urban design concept.

A Yes. We developed a preliminary urban design concept within the budget that was available for this task for the corporation, and within the time that they indicated they have for us to do this work.

Q I will hand you three documents which are entitled, "Mitchell Field Development Plan 1, 2, and 3." Can you identify those documents?

A Yes. These are copies of a report that we submitted to the Mitchell Field Development Corporation.

I should add that the subtitle of these documents says Interim Report.

Q Were those reports in fact delivered to the Mitchell Field Development Corporation?

A No.

Q To whom were they delivered?

A By the time the reports were completed, the Mitchell Field Development Corporation was dissolved and defunct, and the reports were delivered to the county executives.

MISS THOMPSON: I would like to mark these for identification.

MR. JASPAN: Offer them in evidence.

MISS THOMPSON: And move that they be admitted in evidence.

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MR. JASPAN: Some of these have been found to be incomplete.

THE WITNESS: I have no way of knowing whether these copies are incomplete.

MISS THOMPSON: These are copies we used for depositions. At that point they were found to be complete.

Plaintiff's Exhibit 21 is volume 1. Plaintiff's Exhibit 22 is volume 2. Plaintiff's Exhibit 23 is volume 3.

THE CLERK: So marked.

(So marked.)

BY MISS THOMPSON:

Q Mr. Liu, in response to my previous question you indicated that the three-volume report was directed to the county executives; is that correct?

A Yes.

Q It is true, was it not, that you were given instructions to deliver these volumes directly to the County executive, and not to anyone else; is that correct?

A Yes.

Q Did you in fact hand them to the county executive?

A No. I handed them to Commissioner Wells, who assured

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me that he would deliver them to the county executive.

Q And who was Commissioner Wells?

A Commissioner Wells is commissioner of commerce and industry. He is the county's representative in dealing with us as the county's consultant.

Q I'm sorry, I didn't hear you?

A In dealing with us as the county's consultant.

Q Were you ever given any instructions to release the three volumes study to the public?

A No.

Q To your knowledge, has the three-volume study been released to the public?

A To my knowledge, no.

Q After the three-volume study was given to the county, did you receive any comment from the county concerning the three-volume study?

A I'm sorry, I wasn't listening to your question because I was thinking about the answer to the last one.

Q Okay.

A It's a difficult question in the sense that I know, although I don't know how, I know that the Newsday has copies of the report, and I think that the members of the corporation have copies of the report.

Q When you indicated that you were given

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instructions to deliver the three-volume report to the county executive, what county executive was that; what was his name?

A Ralph Caso.

Q When were the reports completed?

A They were completed and delivered around the end of January in 1971.

Q Did there come a time after January, 1971, when you were retained to do work for the county?

A Yes.

Q When did that take place?

A That took place approximately nine months later.

Q And what tasks were you given to do by the county?

A I was retained by the county as a continuing planning consultant, with responsibility to give the county ongoing planning advice and assistance on a per-assignment basis.

Q Are you presently preparing a comprehensive plan or master plan for the development of Mitchell Field?

A No.

THE COURT: We will have to recess for about 15 minutes. I have an appointment inside that I must keep. It will be about 15 minutes.

* * *

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MR. BELLMAN: Mr. Caso, please.

THE COURT: The witness Liu has been suspended and Mr. Caso will be called.

R A L P H G. C A S O, having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BELLMAN:

Q Mr. Caso, where do you reside?

A 2045 Baldwin Court, Merrick, Long Island, New York.

Q That's in Nassau County, is it?

A Yes.

Q Do you currently hold any public position?

A I hold the public position of Nassau County Executive.

Q And you were elcted to that post?

A In November of 1970, yes.

Q Could you tell the Court what other public positions you have held prior to becoming County Executive?

A Well, my public career goes back to 1935 when I was a councilman on the Hempstead Town Board, until 1961 when I was elected supervisor of the Hempstead Town Board.

And then in 1965 I was elected presiding supervisor of the Hempstead Town Board and served in that capacity until

A I would say that the largest -- the greatest part of it is presently vacant in that there is no construction ongoing at the present time.

Q Right. There is -- the Coliseum is located in this tract.

A Yes.

Q And that is constructed and completed.

A Yes.

Q Other than the Coliseum is there any other structure that has been built on this tract held by the County?

A No structure as yet. There was a very important network of roads that had to be developed to service the Coliseum and eventually the total Mitchell Field complex, but as far as physical construction goes, no, nothing else has been constructed. That is not to say, however, that there aren't plans for the other acreage.

Q Which county official of official has responsibility for determining at this time the uses or the types of development which will go on at Mitchell Field, this tract of land we have been talking about, or the portion of the tract that we're talking about?

A The County Executive, as the administrator of the County Government, would initiate plans or projects or

programs, but then eventually it would have to go to the Board of Supervisors for the necessary legislation to implement it, primarily the funding.

Q But in terms of the overall planning and development proposals, this would be initiated from your office?

A Relative to public purposes, yes. Where there are not public purposes then, of course, you have got to add the extra dimension of zoning, which is the responsibility in this instance of the Town of Hempstead, and would then be the responsibility of the Town Board of the Town of Hempstead.

Q The County does not require zoning approval in cases where the development would be for publi purposes, is that correct?

A That's correct.

Q Do you have -- are any members of your staff currently in charge of the day-to-day planning or operation for Mitchell Field?

A Nassau County Planning Commission, which is an arm of the County Government is charged with the day-to-day planning and review of what is contemplated there, as well as the Commissioner of Commerce and Industry, James Wells, who also has been involved in the overall development.

Those are the two agencies that come to mind.

Q It's true, is it not, Mr. Wells has overall supervisory responsibility under you for the development of Mitchell Field?

A Supervisory, I would say yes.

Q Now, has your administration given any consideration to the type of development which will take place on the County held land of Mitchell Field?

A Yes. I think going back to even before the time that I was County Executive, we have talked in terms of the devlopment of the property acquired by the County for scientific, educational and cultural purposes. And that has always been in the background of how we have tried to advance the plan, even to the present date we're developing it along those lines.

Q What are the -- within this framework of the scientific, educational, cultural purpose, what are the specific uses that your administration currently is considering for Mitchell Field in addition to the Coliseum which is already there, of course.

A We presently are ready to move forward with the construction of a central reference library, which will serve all of the residents of our county, and that will be a public purpose developed under the aegis of a Board

of Trustees established by the State Education Department.

We also are developing an area for a recital hall to meet the cultural needs of the County. And that would be in that area near the Coliseum.

There has always been discussion about the need for a hotel, which would not be public, but which would be built by private enterprise, but a hotel was always contemplated as part of the development of this area at Mitchell Field.

The County acquired some 66 acres, 67 acres, which is in the heart of the area for park purposes. We got it for a discount. When I say we, I mean Nassau County Government purchased it at a discount for park purposes, and we're in the process of developing a plan for that.

We also are setting aside property in the northwest quadrant and along Oak Street at Mitchell Field for a -- which I call a complex for the handicapped, where there would be some 35 or 40 acres that would be set aside for Boises, which is the school district agency charged with responsibility of developing programs for the handicapped, the retarded, the emotionally disturbed and cerebralsied, and also some form of a technical and trade high school, which we do not have as such in Nassau County.

We have also been thinking in terms of a police

precinct there to serve the needs of the area, with police protection. Recently the County acquired the bus system and we must now add a bus facility that will take care of the busses and the office for our subsidiary authority that was created by M.T.A. And that is also planned as part of the development.

And we also have to provide in the area a firehouse for fire protection and the Hempstead Plains, which is property that ecologists and conservationists have asked us to keep in its natural state, takes up about fifty acres.

I think that generally relates how we're planning the development of the field.

Q You are also, are you not, considering the development of the Santini property for some old-age housing, in conjunction with the Hempstead Housing Authority?

A Yes. The Santini area, which is about eighty acres, is considered for senior citizen housing and also for a commercial and industrial development to bring in ratables for that particular area.

Then there is a tract of land on the turnpike which is also being considered for commercial development.

Q How many acres are there at the Santini site?

A I think roughly eighty acres in all.

Q You said you are planning senior citizen housing at Santini location. How many units are currently under consider?

A The Town of Hempstead is the agency that has the jurisdiction for senior citizen housing, and they are planning on about ten acres to put 250 units, as I recall it.

Q The Santini property is somewhat removed from the main Mitchell Field tract, is it not?

A Yes, in the sense that it is southerly and easterly and is not really contiguous because you have got the Hempstead Turnpike that separates it as well as some of the other residential areas.

Q The Santini area is in here, is it not? (Indicating.)

A No, it's over to your right more.

Q Excuse me, right here.

A Yes.

Q And this is the Hempstead Turnpike that you just made reference to.

A Yes.

Q It separates the property from the main bulk of the Mitchell Field area?

A Yes.

Q Now, have you outlined for the Court all the proposed uses that you currently have under consideration

for the Mitchell Field area?

A Yes, I think so. We have, of course, up at the northerly section, which is on Stewart Avenue, again for identifcation, there is acreage which the Federal Government owns on which will be developed a Federal office complex. That has been approved, some 75 million dollars, I believe, and it is just a question now of putting the plan together and developing that.

In addition to that, there is some 15 acres which is marked in red, which the County is holding for County Government purposes as part of, again, a Governmental complex when the Federal office building is built.

There is also on the north side of Stewart Avenue, that section up at the top there, where the Federal Government has acquired property and they are going to an F.A.A. office, we're told --

Q That is north of Stewart Avenue, correct?

A Yes, that the County no longer owns, the F.A.A. and the Federal Government has a portion of it, and the Town of Hempstead has just acquired a portion of it for a recycling plant.

Q But that is not part of the County holdings?

A No.

Q Except for that 15.3 acres, the other parcel

also is not County holding, the Government own it and is proposing a Federal office building?

A Federal Government owns it.

Q That's right.

A Yes.

Q It's your position, is it not, that housing should not be developed on the main tract of Mitchell Field, is that correct?

A Outside of senior citizen housing, I think that has been my position consistently, yes.

Q Are you in favor of senior citizen housing on the main tract, other than Santini property?

A No. I don't see how senior citizen housing would be compatible with the plan that I have outlined. The senior citizen housing that I have made reference to is within the Santini area.

Q The 250 units currently under consideration would be the Hempstead Housing Authority?

A Yes.

Q Aside from those 250 units it's your position that additional housing units of any type should not be included in the Mitchell Field development plans?

A That's correct.

(Continued on the next page.)

Q Now, could you tell the Court why you -- now, you said it has also been your consistent position on the subject of housing at Mitchell Field? Is that correct?

A Yes.

Q Could you tell the Court why you believe housing should be excluded from Mitchell Field? When I say this, I keep in mind that there is the 250 units at the Santini, but I am referring to any additional units.

A First of all, I think that it has to be made clear -- and I am sure it has already been done on this trial -- that the County does not have housing powers. So that as far as Nassau County building houses in Mitchell Field, it cannot do so as Government, because that authority rests with the towns and villages in our County.

Zoning, which is also a question of whether you are going to have housing --

THE COURT: Mitchell Field is in what town?

THE WITNESS: It is in the town of Hempstead.

THE COURT: Hempstead?

THE WITNESS: Yes.

THE COURT: So, it would have to be the Town of Hempstead that would do it?

THE WITNESS: Yes.

THE COURT: Would it need an approval from the

* * *

citizens housing there, that is it.

THE WITNESS: That is right.

THE COURT: If Hempstead says I don't like it there, then that is the end of it.

THE WITNESS: That is exactly the point, Your Honor, because we do not have zoning. We do not have authority.

If I said to put public housing at Mitchell Field and the Town of Hempstead said we are not going to zone it for that purpose, I can't do a thing about it as County Executive.

BY MR. BELLMAN:

Q Mr. Caso, that is also the case, is it not, about any of the proposed developments that are not in the area of public purpose, such as the commercial property, such as the hotels, and of course, the senior citizen housing?

A Zoning is required by authority which is in this instance, the Town Board of Hempstead.

Q So the issue of housing differs in no way with respect to looking to the Town of Hempstead for zoning approval than for the hotel.

A The hotel, or commercial development, or any of the other areas where zoning is required.

But again, the mere fact we are recommending it is not

tantamount that they will do it.

THE COURT: Who owns the land? The County owns the land?

THE WITNESS: The County owns the land.

THE COURT: In the Town of Hempstead?

THE WITNESS: Within the Township, yes.

THE COURT: Would you have to deed over that part of it to the Town of Hempstead in order to put housing there? How would you get the housing there? Would you have to lease it to them to put housing there?

THE WITNESS: I think we would have to deed it to them, because the Federal requirements under which public housing is built, requires that the authority owned the land. So in that instance the County would have to sell the land and then the Housing Authority would have to apply --

THE COURT: Are there any restrictions, as far as you know, on the County Executive, on the question of whether or not you have a right to deed or lease that land to anyone else other than to the County itself?

THE WITNESS: Well, it would have to be approved by the Board of Supervisors. I just

can't automatically transfer the land. There are always others that would have to act on the recommendation.

BY MR. BELLMAN:

Q But the answer to his Honor's question, there is no legal restriction barring the County from selling or deeding certain portions of Mitchell Field to other either private bodies or public agencies such as the Housing Authority. There is no legal restriction to that, assuming it is approved in accordance with the charter of the County of Nassau --

THE COURT: I think you are putting the cart before the horse in this case. It is more and more evident to me all the time. The more I try it, the more evidence I see is coming in.

Go ahead. Keep asking questions. I will ask them all when I get around to it.

THE WITNESS: I apologize --

THE COURT: Now, I will rest for about five more minutes.

THE WITNESS: I apologize if we haven't moved the case along --

THE COURT: No, we are moving the case along. There is no problem here on that.

BY MR. BELLMAN:

Q I think you lost my question and I would like an answer.

There is no legal -- his Honor was asking whether or not there are any legal barriers from deeding any of these properties?

A No, there are no legal barriers unless the property -- this is, of course, academic -- were to be restricted by deed when we took it from the Federal Government, such as the 67 acres which happens to be --

THE COURT: Let me ask you one thing. Assume I was to find in your behalf that the County of Nassau is not putting low-cost housing. And I say to you, all right, the County of Nassau is to put low-cost housing there. I give you that.

What are you going to do with it, after I give it to you? Who is going to make them deed the property over to Hempstead? Me? I have no authority to deed it to anybody any more than a private citizen. I can't involve myself in the legislative act of a community.

MR. BELLMAN: Well, I disagree --

THE COURT: How would you answer that question? It has been bothering me ever since I started this case.

* * *

housing should not be included in the County-owned land.

And I would like to understand -- I think my question was, -- you may have given an answer, but it has been a while ago, and I just don't recall -- will you please tell me why you believe that housing should not be located at Mitchell Field?

A Because in the time that I have been working on the acquisition as well as the development of Mitchell Field, going back as you yourself have indicated in 1961, when it was first declared surplus, the contemplation of the County in acquiring the property was civic, cultural and educational purposes. It was never bought for housing because of the fact that even back in 1961, and even after that, the County has no housing powers.

So it was never contemplated that this property would be acquired for housing. It was meant to take care of the needs of our County, which is a million and a half people, in the areas of public facilities as presently do not exist, and should belong in a central area, such as Mitchell Field.

Q Mr. Caso, is it also your position that housing in the basic tract of Mitchell Field, be inconsistent with a civic, educational and cultural purpose?

A Yes, I think it would be, because when you consider the area, it is not an island unto itself. It is not isolated and as you look at the map, you can see it. It is surrounded by residential communities.

So that it is not a question of having a balance at Mitchell Field, where you would say, well, it is unbalanced, if you don't have the housing, because it is within the confines of a whole area that includes neighborhoods and residential concepts.

Q Now, you do not disagree that there is a serious housing problem in Nassau County?

A There is a housing problem throughout the United States of America, and Nassau County is included within that problem.

Q And that problem relates in part to the needs of low-income citizens, is that correct?

MR. HYMAN: Objection, your Honor, there is no foundation laid with this witness here.

THE COURT: That is true, sustained.

Q Well, could you define for the Court what you view as the housing problem in Nassau County --

THE COURT: Housing for more people.

MR. JASPAN: He has called the witness for facts.

THE COURT: Yes.

* * *

A I believe it did make reference to -- one of the primary purposes in acquiring it would be to provide housing, and predominantly senior citizen housing, which again, being the chief executive of the town at that time, I had the authority and jurisdiction to do.

Q Well, let me hand you a copy of a press release dated March 10, 1966. This is a press release from the Town of Hempstead and the reference across the top is, "Caso Plan for Mitchell Field Unveiled."

I call your attention to the fourth paragraph of that press release -- excuse me, the second paragraph says in the second sentence, "the design," Caso said, "was drawn to broaden the tax base, create new jobs, add new park and recreational facilities and meet the demand for garden apartments."

Then in the fourth paragraph of the press release it states, "The development of the uncommitted 150 acres, according to the Caso plan, would allocate 70 acres to light manufacturing, office buildings, and a heliport in the industrial oriented northern edge of the field bordering a railroad siding; 15 acres to the shopping area to service an adjacent residential development; 40 acres to accommodate approximately 700 units of garden apartments. This sector of the field is now zoned 75 percent industrial."

Could you read for me the next paragraph which purports to quote you, paragraph five of the press release?

A Yes. "There is a substantial need for multiple dwelling construction," Caso said, "particularly among young people just getting married and older people who no longer need their big private homes." Mitchell Field is close to educational and recreational facilities, transportation and shopping would be ideal. "Moreover," he said, "such construction would ease the pressure for apartment house and single-family residential areas where they are not compatible with the neighborhood."

Q The next paragraph, please.

A "The garden apartments would offer a wide range of rentals, 500 units of low rent. Federally subsidized housing sponsored by the Hempstead County Housing Authority would utilize 25 acres."

Q That is sufficient. Now, it is true, is it not, that in the plan that you unveiled -- strike that.

Do you recall the issuance of this press release?

A Well, it is a press release that was issued from my office at that time in 1966, and I would verify that this has come out of my office.

Q Do you recall --

A I don't recall the, you know, the specifics until now.

Q Do you recall making the statements which are attributed to you from your office press release?

A Yes, if they are in this release, I will stand by it.

Q Now, it is true, is it not, that you were proposing 700 units of garden apartments for Mitchell Field?

A 40 acres to accommodate approximately 700 units of garden apartments, right.

Q And you were proposing multi-family middle income housing; is that correct?

A I don't know whether it would be multi-family -- my reference seems to be to garden apartments.

Q You say, "There is a substantial need for multiple dwelling construction, particularly among young people just getting married and older people who no longer need their big private homes."

So you were proposing multi-family housing beyond -- for a class other than senior citizens?

A Yes, it would be the garden apartment type, though; when we talk about multiple dwellings I don't quite understand when you say multi-family. You mean two family houses?

Q We will use your verbiage, "multiple dwelling construction."

Now, also attached to this press release was an outline called, "Caso Plan for Future Development of Uncommitted

Portion of Mitchell Field." Under it where it comes -- there is a section called, "Housing, 40 acres..."

MR. JASPAN: If your Honor please, if he is going to read from it he ought to show it to us first. He can't read it into the record. I have not seen this.

THE COURT: You never saw that press release?

MR. JASPAN: The one I have is a later one, but he doesn't want the later one, he wants to use the one he has.

I would like to see what he is using. Go ahead.

BY MR.BELLMAN:

Q Forty acres, and it says, "to accommodate 700 units of housing; 25 acres for 500 units of Town of Hempstead low rent federally-subsidized housing, limited profit philanthropically sponsored housing, privately developed multiple dwelling construction."

There is no reference in there specifically to senior citizen housing with respect to low-rent housing, is there?

A No.

MR. BELLMAN: Your Honor, we would like to move the admission -- I will have it marked

as Plaintiff's Exhibit 24 and move the admission into evidence of a copy of the March 10, 1966 press release from Mr. Caso's office.

THE COURT: It is in evidence.

THE CLERK: Press release dated March 10, 1966 --

MR. JASPAN: May I ask for what purpose it is being offered?

THE COURT: So I can look at it.

MR. JASPAN: His power as presiding supervisor is entirely different than the power which is granted him as County Executive.

THE COURT: Take a look at it.

THE CLERK: Plaintiff's Exhibit 24 is marked in Evidence.

(So marked.)

BY MR. BELLMAN:

Q Mr. Caso, I have handed you a copy of another press release from the Town of Hempstead, dated May 31, 1966, the subject, "Case calls for Mitchell Plan before June deadline."

Now, this press release also deals with the 150 acres at Mitchell Field that the town was attempting to buy from GSA; is that correct?

A Yes.

Q Do you recall this press release?

A I don't recall it, but I will vouch for it since it is on our official stationery.

Q Now, in the second paragraph it reads, "Caso himself put before the Mitchell Field Planning Committee on March 10 a plan for the use of 150 acres at Mitchell for what he called, 'a balanced residential, industrial shopping and recreational development.'"

Do you recall making that statement?

A If it's in here I must have made it.

Q It is true, is it not, that at the time you were making these proposals, the county had acquired land and was proposing a cultural and educational center at Mitchell Field; is that not true?

MR. JASPAN: I object to the question. It is based upon a false premise.

The land was not then acquired. These were proposals being made to acquire the land, as I understand it.

The 151 acres was not acquired until later.

MR. BELLMAN: My reference was to the previously purchased land by the County of Nassau,

some 400 plus acres.

Q You are aware of that?

MR. BELLMAN: The witness has testified that this second hundred and fifty acres came up in 1966. The original purchase was in 1963.

MR. JASPAN: The deed was 1968 for the second purchase.

Do these questions relate to the new piece or to the old piece?

MR. BELLMAN: Excuse me?

MR. JASPAN: It is obvious, the Town of Hempstead could not be applying in 1966 for a piece of property that had already been acquired by the county.

The Town of Hempstead was applying to the general services administration for the acquisition of a property still in title with the Government. That can only be the 151 acres.

As Mr. Nickerson testified the other day, both the town and the county were in competition for that particular piece of land. Mr. Caso had a plan for the land; Mr. Nickerson had a plan for the land. Mr. Nickerson's plan was park space and industrial use, and he subsequently

won, and that was the dedicated use for that property. It resulted in that park piece that we have there and the rest of it which will ultimately be developed.

This has nothing to do with the 435 acres.

THE COURT: Is that right?

THE WITNESS: This is separate and apart from the 435 acres.

BY MR. BELLMAN:

Q You are aware that the county at that time had acquired --

THE COURT: Which time now, you have three dates, you have '63, '66 and '68?

Q As of the time that the Town of Hempstead was applying to purchase this 150 acres, it is true, is it not, that the county had previously purchased over 400 acres from the Government? You are aware of that?

A I am not aware of the time frame. But again, the deeds would show.

But if the deed shows that we had acquired the 435 acres, then, yes.

Q Right. And you have yourself gone to Washington to lobby for sale of that original parcel for educational, cultural and civic purposes?

A It was in the process of being acquired. Whether or not it had indeed been acquired and the deeds transferred to the county is another question.

Q The record will show that it was purchased in 1963?

A If the record shows it was purchased, then the record will speak for itself.

Q You are aware then that -- the county had land and was proposing cultural, civic and educational purposes for this original tract of land that it had already purchased?

A Yes.

Q And at that time, knowing this, you set forth a proposal for inclusion of housing at Mitchell Field; is that correct?

A At that time we had filed this application for the additional property, yes.

Q And that involved inclusion of 700 units of housing?

A Based on this proposal, yes.

Q Attached to the press release I gave you is another press release of March 30, 1966 which came from your office and is entitled, "Caso on Mitchell Field. Profit-Maker or Back-breaker?" And that press release, does it not, refers to a speech you had given at a breakfast meeting

of the Long Island Association, and a copy of that speech is also attached to the documents I gave you, which makes reference to the fact that you, as Town Supervisor, were critical of some of the things that Mr. Nickerson was doing with respect to the first parcel of land; is that correct?

A We were critical of his plan to develop a cultural center on some of the acreage there in the magnitude in which he had proposed it.

(Continued on next page.)

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Q That does indicate that you were aware of plans by the County to develop a cultural, educational civic center on the original parcel?

A It indicates that the county had acquired the property for civic, educational and cultural purposes, but that no definitive plan had yet been put forth at this date.

This was a proposal that had been made by the then County executive to build the -- what was referred to as the John F. Kennedy cultural center.

Q You were --

A And encompassed many buildings, and varied uses of those buildings, which at that time I had attacked on the plan that he had put forth.

Q But you did not, did you, oppose the notion of a cultural center on this land?

A Yes, I opposed the cultural center on that land in the magnitude in which Mr. Nickerson had put it forth.

Q In terms of the magnitude, but not the concept, of a cultural center?

A It depends on what you say when you call it a concept.

The concept of a cultural center may be one thing to you and another to me, but if you are talking about the Nickerson plan as my statement says, it was much too much

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a grandiose scheme for the development of a cultural center at Mitchell Field because of the expense, the cost of it.

Q Could you turn to the speech, I think it is out of order, it comes here, and read the first sentence of the paragraph in the second page of the speech, of your speech.

A You want me to read that?

Q Just the first sentence, would you, please?

THE COURT: At this time you were Town Supervisor of Hempstead.

THE WITNESS: Yes.

THE COURT: And at that time they had the right to develop houses, they had housing law?

THE WITNESS: Yes, your Honor. That is the whole purpose of the plan, because as the presiding supervisor, a chief executive of the town, I did have housing powers, and part of my plan was to try to acquire this and build housing.

I don't want to clutter the record, but I think the record will show that I was reversed by the then County Executive, who said he did not want it used for that

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on this that you show me, and I think it probably was required by the GSA at that time, that the governing body that was filing the application enforce the application, and that's what this is.

Q It's true, is it not, that the application for the purchase of 191 acres also envisioned use of the land partially for residential uses; is that correct?

A Yes. In the resolution it says, "multifamily garden apartments and senior citizen housing, 57 acres."

MR. BELLMAN: Your Honor, we would like to have marked -- excuse me --

Did you support that resolution?

THE WITNESS: Yes. It shows that there were six votes, and it doesn't show that I was absent.

It may be that I was not there because there are eight members of the Board -- maybe at that time there were only six. My recollection is that I supported it and voted aye on it.

MR. BELLMAN: I would like to have marked as Plaintiff's Exhibit 27 the resolution of the Town Board of July 26, 1966, and move its admission in evidence.

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request to the General Services Administration by the Town of Hempstead for the purchase of 191-plus acres declared surplus at Mitchell Field, dated July 28th, 1966.

Now, Mr. Caso, are you familiar with this document?

A Yes, it was part of the entire application for the property of Mitchell Field. Though I am not familiar with its contents without refreshing my recollection.

Q All right. Is it your recollection that this was indeed forwarded to GSA?

A Yes. I would assume that it went forward as part of the application.

Q This is the application referred to in the press release we just discussed, is it not?

A Yes.

Q On page 5 of this release, there is a discussion under point B called "Necessary Facilities," and number one under "Necessary Facilities" is housing, is that correct?

A Correct.

Q Could you read into the record the first paragraph of that discussion?

A "There is a substantial need for multiple-dwelling construction to accommodate young persons just getting married and older persons who no longer desire to maintain

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private houses. Mitchell Field, close to educational and recreational facilities, transportation and shopping, would be ideal for such housing.

"Moreover, such construction would ease the continuous pressure for apartment construction in single-family residential areas, where they are not compatible with existing land uses."

More?

Q No. On page 6, could you read the second full paragraph?

A "Since the need for multiple dwelling housing is not confined to senior citizens falling into the income ranges as set forth by the Department of Housing and Urban Development, it is proposed that 33 additional acres be utilized for middle-income housing, to be built by nonprofit sponsors, including church groups and private developers.

"Under current zoning standards, this acreage would permit an additional 660 dwelling units, resulting in an aggregate of 1160 acres. "

THE COURT: Is the Town interested today in these resolutions that you are reading now?

THE WITNESS: This was a plan that was submitted to GSA, and that resolution

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THE COURT: In any event, you were not against it at the time; you were not against some kind of housing there?

THE WITNESS: That is correct.

THE COURT: You were for housing for young people and middle-income people at that time?

THE WITNESS: That's correct, and senior citizens.

THE COURT: And that was the application you made?

THE WITNESS: Correct.

THE COURT: The county itself being superior, they obtained the land through Eugene Nickerson.

THE WITNESS: Correct, for other purposes.

BY MR. BELLMAN:

Q It is clear, is it not --

THE COURT: It's very clear to me.

Q -- that in 1966, you supported a proposal which would have brought 1,160 housing units to Mitchell Field; is that correct?

THE COURT: Can I ask him one other

question? All right, answer that.

THE WITNESS: It is contained within the application, yes.

BY MR. BELLMAN:

Q And you supported that proposal?

A We supported it.

Q You were aware at the time, were you not, that a cultural, civic and educational center was being proposed for the larger tract of land that the County had already purchased?

A We were aware of the fact that the property was acquired for that purpose, but at that point in time there was no definitive plan as such.

THE COURT: Let me ask you this: You don't have to answer it if you don't want to, but in any event, the question I would ask you is, at the time you were Town Supervisor and Mr. Nickerson was the County Executive at that time, both of you belonged to opposing political parties; is that right?

THE WITNESS: Yes.

THE COURT: Both of you were vying for various things at the time -- did that have any influence on the positions that

each of the other parties.

I ran as a Republican and Andrew DePaolo ran as the Democrat-liberal -- he had liberal endorsement that year, as I recall it, and we had a conservative running against me, and I forget his name, offhand.

Q It is true, is it not, that the issue of the development -- as to how Mitchell Field would be developed was a critical issue during that campaign?

A It was one of the issues; I wouldn't say it was a critical issue. But it was something that became the subject of controversy and debate during the campaign, because at that point in time there was a plan put forth thatwould have included nigh-density, high-rise public housing at Mitchell Field, and that became a cause celebre during campaign with various people speaking for and against it.

Q Isn't it clear that it was one of the primary issues in the campaign, the proposed housing in Mitchell Field was one of the primary issues in that campaign?

A Housing, of course, would be a primary issue. But it was one of the primary issues, yes.

I ran in that campaign and I can't recall,you know--there were many issues, but I would say that this was one of the primary ones, yes, because it was a veryimportant point in the overall discussion of Mitchell Field, and the

development of Mitchell Field.

Q Do you recall your deposition being taken on several different occasions? The one I am referring to was on October 11, 1972, taken by Mr. Dennison Raye, an attorney for the plaintiffs?

A Yes.

Q And on page 52 of volume 2, do you recall being asked, "Was that the only issue in the campaign in which you and your opponent differed?" And you answered, "I think it was the key issue. There were other issues, but I think that primarily, the campaign involved on how is Mitchell Field going to be developed, and you cannot consider it an island unto itself..." And it goes on.

But I make reference to the statement that it was the key issue and the primary issue.

Do you recall being asked that question and making that statement?

A I remember the question, and if that is my answer in the record, I think I signed that as my answer.

Again, you are using semantics because whether you call it a primary issue or a key issue, the whole issue of the development of Mitchell Field was a key issue. Housing was just a part of that plan for development, and I think that is a very important nicety which should be made as we try to refer back to other records and other statements that

I made.

Q It is true, is it not, that the key issue with respect to Mitchell Field during that campaign was whether or not housing would be included on the tract; is that correct?

A One of the key issues would be also, depending on who you were talking to -- if I were talking to the conservationists, one of the key issues there wouldbe whether or not we were going to retain 50 acres of the Hempstead plains. They couldn't have cared less about what we were doing on other aspects of it.

When you talk with the cultural society in our --

THE COURT: You mean the green-belters?

THE WITNESS:The green-belters.

If you talk about culture, you have a group who said, "We want to make sure there is a recital hall here, so we can have theater, have plays and have music."

Others wanted the park; others wanted a school for the retarded.

So the overall development of Mitchell Field was a key issue. Housing, of course, was one of the factors, as to how Mitchell Field would be developed.

BY MR. BELLMAN:

Q At least your testimony today is that at least, it was one of the primary issues during that campaign.

MR. JASPAN: If your Honor pleases, he is playing the game --

THE COURT: Anything referring to housing is a primary issue.

It could be in the Adirondack Mountains.

BY MR. BELLMAN:

Q Could you tell the Court --

THE COURT: People like to hear it.

Q Could you tell the Court what your position was with respect to inclusion of housing at Mitchell Field, aside from the 250 units of senior citizen housing at the Mitchell Santini property?

A My position, after review and study, relative to all of the debate and all of the discussions and all of the plans that had come out for Mitchell Field, was that we should not include housing as a primary purpose in the development of Mitchell Field.

Since the County did not have the housing powers, as I have indicated, I did not see where this was a responsibility of the Nassau County government to accomplish this

purpose. And that we would revert to the civic, educational, cultural purposes, which is consistent with the view the former County executive took when he asked the GSA not to give the Town the property for housing, and consistent with other proposals relative to the development of the area.

Q During that campaign you attempted to, like, any politician, meet a lot of people and talk to a lot of people in the County; is that true?

A Well, in the campaign we do go out and make campaign appearances, but I think that my record of public service has been that I'm out all the time, regardless of campain, talking to people.

Q At least it is a concentrated effort to reach the people -- I think that is a fair statement.

A Well, concentrated, yes.

Q One of the things you do during a campaign is try to find out what the people are thinking on various important issues; is that correct?

A We talk with them about issues. They talk to us if we go into meetings and take questions, that's a means of communication as to how they feel.

Q And you learned during that campaign, did you not, what the people of Nassau County, or a large percentage

of the people of Nassau County, felt about the issue of housing at Mitchell Field?

A Yes.

Q It is true, is it not, that they were in large part opposed to the inclusion of any housing at Mitchell Field?

A I would say that they were opposed to any massive development of Public housing at Mitchell Field, for many reasons; primarily, the impact it would have on the communities, especially those that surround the area, the tax burden, the need for schools, the other questions of -congestion, and so on.

Q But they were generally in favor of your position that there should be no housing, not just large developments, but no housing on Mitchell Field; is that correct?

A I would say that they basically felt that that was not the place to solve the housing needs for Nassau County, by having massive development of housing at Mitchell Field. That would be basically so.

I think that in the context of the campaign of 1970 we should not lose sight of the fact that at that time, as we talked about the development of Mitchell Field, that I came up with an alternate plan for housing through out

entire County, which was the scattered site plan which was put forth as a means of trying to solve the housing needs of Nassau County.

THE COURT: Come up a minute.

(Discussion at the bench, off the record.)

THE COURT: We will take a five-minute recess.

(Recess.)

THE COURT: We will let him go and bring him back. I don't want to rush you on it.

MR. BELLMAN: He is an important witness, your Honor.

I told your Clerk a half-hour would not be enough.

THE COURT: It is unfair to everybody to continue for a half-hour. I would just as soon bring him back. We will let him go because I don't think we can finish him in a half-hour.

It may very well be you may not need to call him later on, anyway .

MR. BELLMAN: On the record, I want to state that we do intend to call him.

* * *

AFTERNOON SESSION

Witness J A M E S M . S H U A R T , residing at 269 Moore Avenue, Freeport, called as a witness, having been first duly Sworn by the Clerk of the Court, testified as follows:

THE CLERK: State your name, sir.

THE WITNESS: James M. Shuart.

THE CLERK: Spell it, please.

THE WITNESS: S-H-U-A-R-T.

DIRECT EXAMINATION

BY MRS. THOMPSON:

Q Mr. Shuart, by whom are you employed?

A The County of Nassau.

Q And what is your position?

A Commissioner of Social Services.

Q For how long have you held that position?

A I assumed office January 1, 1971.

Q Were you appointed to your position?

A Yes, I was.

Q By whom were you appointed?

A I was nominated by the County Executive, and approved by the New York State Department of Social Services.

* * *

Q When you are talking about the general case load, that would be --

A That would include all of the public assistance recipients.

Would you want that?

The total case load at the end of March, 1973, there were 14 -- whoops, wait a minute -- 22,891 cases, and 52,281 individuals.

Q And what would be the racial breakdown of either the 22,000 cases or the 52,000 individuals?

A Well, in terms of individuals, of that 52,281, 26,925 were classified as white, 51.5 of the case load.

Black, 23,474, for a percentage of 44.9 percent.

Then there is another category that is recognized by the Federal Government of "Others". And there were 1,882 of those, or 3.6 percent.

Q Do you have with you any information which would indicate the racial breakdown of the recipients of aid to dependent children?

A No, I don't.

Q Do you know of your own knowledge what proportion of the recipients of aid to dependent children are either black or white?

A They run pretty close to the split. I would think that

in old age assistance, it is more white than black, but in the other categories, they are pretty even. To the best of my knowledge, I mean.

Q You indicated earlier in describing the work of the Department of Social Services that you have responsibilities with regard to finding housing for persons qualified for your services, is that correct?

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(continued on next page.)

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the testimony I gave to the Human Rights Commission, which they attached to their report.

I don't know what statistics you want out of that report. I will do my best to recall it.

Those were January figures, by the way. Those, I was using at the high-water mark of February --

Q Do you recall the statement in the Nassau County Commission report, in which the Commission on Human Rights stated that if believed, there is a "...settled process by which placements are made according to discriminatory habits..."

A Well, if you refer to the report I think you will see that by attaching my testimony to that, we are very clear about it. That I looked into this very carefully.

That I was satisfied that there was no deliberate attempt to discriminate.

That most of the -- that there was no doubt that there were some motels that were all Black or primarily Black and others were primarily White.

However, that was the function of a consideration of different things.

One is that that the motel managements'willingness to accept families was involved.

And some of them also by geographic distribution -- because one of the things that we tried to do, is to place an

emergency housing family into their own district, so if possible to eliminate the disruption of schooling for the children, and to maintain whatever family ties they might have.

But that pattern did exist.

However, if you refer to the report, it is a qualified kind of thing. I looked into it very carefully. In fact, we devoted a lot of attention and a great deal of resources to try to eliminate it.

Now, of course, it is a very different story. Instead of 31 motels, we are down now -- we are only using, I believe, now, nine or ten, and I think there is only one motel where we have more than ten families.

Q Let me show you an article which appeared in Newsday, February 8, 1972, in which a spokesman for your offices quoted, and I ask you to read the quote, and tell me whether that is an accurate statement of your office?

A Which quote are you referring to?

Q A spokesman for the Nassau Social Services Commission said that the report is true and accurate. The reason is that more Blacks are homeless -- and then it goes on.

A Well, I think this is a simplification. It is probably so, you know.

My spokesman could have been any one of two or three people.

At the time the testimony I gave to the Human Rights Commission was that I was studying the situation.

What I was told -- and the current findings were all treated as hypotheses at that time. You know, action, you test them. If they hold up, we would regroup and try to beat those problems.

At that time, if I remember right, 65% of the families in motels were Black, and 35% were White.

I had been told, and it still might be so -- I can't say I tested the hypotheses to the point of verification or for rejection. There were probably were few housing opportunities for them, probably. There might be that today. But I can say that we are getting action here.

Far be it from the statement here of my predecessor who is quoted in the newspaper as saying it was an impossible situation.

"...far be it from the clucking of the tongue I got from my own staff, when I noted we were going to reorganize and address ourselves to the problem..."

I did not believe it was impossible. I do not believe it is impossible now. It is a difficult situation, I will admit.

(Continued on next page.)

BS/td
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Q In terms of finding homes for the welfare recipients, who are in emergency housing, are there any particular communities in which you have been more successful than others in finding housing?

A Well, the welfare population in Nassau County -- I would say the placement of people from motels, self-placement or otherwise, follows the general pattern, geographic pattern of placement for the total caseload.

In other words, you would find it almost a direct percentage. But they do go throughout the County.

Q Do you know whether there are any recipients of public assistance, living in Leavittown?

A Oh, yes.

Q Do you know whether there are any Black recipients of public assistance living in Leavittown?

A I don't know.

Q Has it been your experience in terms of placing public assistance recipients from motels that the Black recipients have moved into Black areas of Nassau County while the White recipients have moved into White areas of Nassau County?

A Well, if I might just preface my statement. You used the term placement again, and I would like to take credit for placing people, but I don't have that kind of power. I don't

* * *

JAMES R. WELLS, called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS THOMPSON:

Q Mr. Wells, by whom are you employed?

A Nassau County.

Q What is your position?

A Commissioner of Commerce and Industry.

Q For how long have you held that position?

A Since January 1, 1971.

Q Were you appointed by the County Executive Caso?

A Yes, I was.

Q Was your position confirmed by Board of Supervisors?

A It was.

Q Do you hold that position for any particular term?

A It is my belief that it is at the pleasure of the County Executive.

Q Could you outline briefly for the Court, your previous employment, before becoming Commissioner of Commerce and Industry?

A From 1945 until 1969, I operated my own, or my family's

Q Do those responsibilities continue to reside in your department?

A The Coliseum no longer does. But those functions growing out of the Mitchell Field Development Corporation still remain.

Q Are you responsible for the over all planning of Mitchell Field?

A I am responsible for coordinating that planning. I don't do the planning myself.

Q Is there at present, a master plan or comprehensive plan for the development of the field?

A The Liu plan which it was based upon, and used some of the elements of the Marcom plan, would constitute the master plan for the development of Mitchell Field, and are currently under review by the Nassau County Planning Commission at this time.

Q Both the Marcom plan and the Liu plan provide for housing at Mitchell Field, do they not?

A That's correct.

(Continued on next page/)

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Wells-direct

Q Does the provision of housing remain part of the comprehensive planning for the development of Mitchell Field?

A Only insofar as there has been an establishment of certain senior citizen housing in the Santini area of Mitchell Field.

I might point out in connection with that, that when the Marcon Plan was being developed, and when Mr. Liu was directed to build upon the Marcon plan, neither agencies were told by the Mitchell Field Development Corporation that right in the midst of their planned development existed a 66.9 acre park, which, in effect, had a reverter in its deed, and must be developed as a park. This caused certain disruptions in the Marcon and Liu Plan.

Q Do you know how many units of housing were proposed in the Marcon Plan?

A The Marcon Plan was a phased plan -- we called it the first phase and the ultimate phase.

I don't recall exactly how many were in the first phase. I believe that the so-called ultimate phase called for around 30,000, 31,000 persons.

Q So that the 250 units of housing now proposed for Santini area would mark a substantial deduction from the 30, 31,000 units proposed?

MR. JASPAN: Not 31,000 --

Q Persons, I'm sorry. Other than the change in terms of housing from the Liu and Marcon Plans, and the park to which you referred, are there any other changes in the Liu or Marcon plans of which you are aware?

A Yes. There were changes that were brought about through our negotiations with the Federal Government, the Department of General Services Administration, involving certain land exchanges.

The lands which were ultimately exchanged were different than the ones upon which the Liu Plan and the Marcon report were based. There was also a change in land exchanges when the New York State Department of Mental Hygiene declared that they no longer had any use for an approximate 25 acre parcel located in the southeast corner of the Santini parcel, and that land reverted back to County use.

There were other changes in the Marcon and Liu plan, that were the suggestions or the initiation of County Executive Caso who felt that he had a commitment, a longstanding commitment, to BOESES, The Board of Educational Services, certain handicapped agencies, such as Cerebral Palsy, the AHRC, Retarded Children Association, to form a complex for the handicapped at Mitchell Field.

In addition, more recently, there was a decision by the County in conjunction with the MTA for the County to take over the bus routes and the bus companies, actually, in Nassau County, and there was a decision to put part of their transportation facility at Mitchell Field.

Q As to the Marcon and Liu plans to which you referred, it is true, is it not, that both of those plans opposed the development of a Nassau Green or some open space at Mitchell Field?

A That's correct.

Q Do you know how many acres were proposed for such use by the Marcon plan?

A No, I don't. However, I do know that the 44 acre parcel in the lower right hand corner -- quadrant, or the southeast quadrant of Mitchell Field proper, was obtained from The Long Island State Park Commission with a -- also with a reverter and a deed restriction that it must be used for park purposes only.

The only other answer that I might give to your question, is that the Marcon report referred to an overall land coverage of 10 percent, and presumably most of the rest would be parking and open spaces.

Q You indicated that there was a present plan to develop an -- a BOESES project at Mitchell Field as a

result of a commitment?

A That's correct.

Q Which was felt by Mr. Caso.

Has Mr. Caso, at any time indicated to you that he had any other uses which he wanted developed at Mitchell Field?

A Principally, the BOESES -- or the complex for the handicapped, as we call it, there was also a commitment on Mr. Caso's part for some form of cultural facility.

There was a commitment, which was a prior commitment of the Mitchell Field Development Corporation, to erect a hotel in conjunction with the coliseum, and I believe that that would be about it.

Q Is your department taking any action on Mr. Caso's commitment with regard to the BOESES project?

A My department, again, is involved more in a coordinating role.

The actual planning of the location and phasing in of this complex is now being accomplished by the Nassau County Planning Commission.

Q During the time that you have been Commissioner of Commerce and Industry, has any actual construction taken place on Mitchell Field?

A The only construction has been the Nassau Coliseum.

Q And that was already under construction at the time you became Commissioner?

A That's correct.

Q So I take it then, that no construction has begun at the field?

A I believe that construction has commenced on the very first elements of the Nassau Community College, which is a separate contract being administered by the Department of Public works.

Plans are just about ready for bidding on the Nassau County reference library, but no construction has taken place, of course.

Q Is it your office which is administering the development of the Nassau County reference library?

A I'm not sure what you would mean by administering. My department is concerned with the coordination and planning of the siting of the reference library, to make sure that it is phased properly into the overall development so that it will be compatible with the road system that is being laid out; that the architecture being developed by the present architects will not be something completely at variance with planned architectural motives for the rest of the field -- things of that nature.

But as far as getting into the nitty-gritty of planning

where the book stacks and retrieval systems of the library are concerned, we are not involved in that.

Q Mr. Caso testified here this morning, and indicated that there were plans to build a concert theatre near the coliseum.

Is that your understanding?

A I know that a report has been received as to the nature of cultural facilities which should be at Mitchell Field.

Q Do you or your office have any responsibility with regard to the decisions concerning what cultural facilities, if any, will be developed at Mitchell Field?

A We will not be responsible for the decisions. But I imagine that I will be sitting in on conferences when these decisions are reached.

Q Is there an office of cultural development in Nassau County?

A I'm not sure if that is the correct title, but there is such an office.

Q Do you know what the title is, if I have it wrong?

A No, I'm sorry. I don't. That is close enough , though.

Q Does that office, or whatever the office is,

more specifically --

MR. JASPAN: Office Of Cultural Affairs.

THE WITNESS: I thought "affairs" was in it, but I was not sure.

Q Does the Office of Cultural Affairs have any responsibility, if you know, with regard to determining what cultural uses will be developed at Mitchell Field?

A Yes. The plan to which I referred was developed under their auspices.

Q You also referred earlier to the park at Mitchell Field?

A Yes.

Q The 66 acre park.

Do you know what office of county government has the responsibility with regard to the development of plans for that park?

A The ultimate responsibility, because of the requirements of the Nassau County Charter, place the responsibility for it in the Department of Public Works.

However, The Department of Public Works is infinitely involved in it as is the Nassau County Planning Commission, and I sit in on most of the meetings as well.

Q Mr. Caso also testified this morning, that certain areas of the field are to be developed with

commercial and industrial uses. Is that your understanding?

A That's correct.

Q With regard to those uses, does your office have any responsibility for their development?

A Yes. My office -- when the actual areas are laid out for commercial development, my office will be involved in negotiating the lease with the developers.

Q It is true, is it not, that your office will be negotiating land leases with those developers?

A That's correct.

Q And it is the plan of your office to have private developers come in and build the commercial and industrial space, is that correct?

A Yes, on long term net lease.

Q Are there any other uses at Mitchell Field, other than the commercial and industrial uses, which to your knowledge presently are intended to be subjected to long term land leases?

A I am not sure that I understand.

No, that land which will not be developed for municipal purposes will be developed by private interests under long term leases.

Q To your knowledge, is there any reason why you would be estopped from leasing land to non-profit housing developers for development at Mitchell Field?

MR. JASPAN: I object to that.

THE COURT: Sustained.

Q Have any leases -- land leases, been signed for land at Mitchell Field?

A No land leases have been signed.

Q Are you familiar with the Hempstead Bank at Mitchell Field?

A Yes, -- I'm sorry. There was a land lease signed by the Mitchell Field Development Corporation which my department fell heir to for an approximate half acre parcel lying off Mitchell Field north of Stuart Avenue.

Q Has a private developer, in fact, built a bank on one half acre of the Mitchell Field tract?

A The bank built -- the Hempstead Bank, right.

Q You indicated earlier that there are plans to develop a certain number of senior citizens housing at Mitchell Field; is that correct?

A Yes.

Q Do you know whether that land is to be leased or sold to the Town of Hempstead Housing Authority?

A The County will somehow convey the land back to Hempstead. I don't know whether this will be through deed or long term lease or what.

That will probably be a decision of the County

attorney, or acting upon his advice.

Q Do you have any responsibilities with regard to the plans for the development of the senior citizen housing on the Santini parcel?

A Only that I had to coordinate the plans for the entire 121 acres of the so-called Santini properties, of which the senior citizens will be a part of.

Q With regard to the conveyance of the land for the senior citizen housing, are you aware of any other plan by the County to convey land to any developers for the development of housing at Mitchell Field?

A Other than the senior citizens, no.

Q To your knowledge, in terms of the leases which you have seen or which you are dealing with, is there any reason why the County cannot enter into a lease to lease land to a developer of housing?

MR. JASPAN: If your Honor please, she has asked that question before, and I objected before and you sustained it.

THE COURT: Sustained. It is not his province.

BY MISS THOMPSON:

Q Mr. Wells, during the time that you have been Commissioner of Commerce in -- and Industry, have you

ever had occasion to request an opinion from the County Attorney about the County's authority to lease land for the development of commercial and industrial space?

A I'm sorry, I don't believe I understand the question.

Q While you have been Commissioner of Commerce and Industry, have you ever sought the County Attorney's opinion on whether it would be legal for you to lease land to commercial and industrial developers at Mitchell Field?

A Yes.

Q What have you been told?

A That it --

MR. JASPAN: I object, if your Honor pleases. He was asked whether he got an opinion. I have no opinion to answering yes or no.

THE COURT: He answered yes.

MR. JASPAN: He said yes, that he got an opinion.

But I don't think you are entitled to that opinion.

Q Are you proceeding with plans to lease land at Mitchell Field?

A Yes. I am negotiating with developers.

Q Did you ever have any meetings with the members of the board of directors or the officers of the

* * *

REDIRECT EXAMINATION

BY MISS THOMPSON:

Q Mr. Wells, who tells you what the uses are at Mitchell Field?

A They generally come out of a conference spot with the County Executive.

Q Is there an over-all map in existence which shows all of the proposed uses as of this time?

A That's the most up-to-date map prepared by the Planning Commission. I would say that that's the game plan.

Q You are pointing to Defendant's Exhibit --

A The one on the left.

Q The one with the red marks.

Other than that, there is no over-all plan, over-all map showing the uses of Mitchell Field?

A Well, that's not entirely so. I indicated that we are building upon the Marcon Plan and the Liu Plan, both of which are replete with maps and studies; certain land swaps, certain discoveries of parks, certain exchanges of land with the town, or sales of land to the town, have changed and altered some of these building blocks contained in the Liu Plan and some of his maps.

So to say that there is only one map, I don't think is

A Yes. There was a timing problem. When we were retained by the Mitchell Field Development Corporation, the corporation wanted to start initial development as soon as possible and the Marcom plan, as explained to us by the -- by officials of the corporation, was not well received in many quarters, and that our prime task was to quickly develop a preliminary urban design concept that would relieve some of the criticisms addressed to the Marcom plan so that the preliminary -- the initial parcels can be sited and zoning approval obtained from the Town of Hempstead.

What we did was to take the Marcom program and the Marcom plan, retain those aspects that we thought were acceptable and good and revise those aspects that we thought were -- need improvement.

We approached this primarily from a physical planning point of view. We didn't go into any programmatic studies. We were also instructed by the corporation to concern ourselves exclusively on those aspects that have a direct relationship to the so-called initial parcels.

Q When you speak of aspects of the Marcom plan which needed improvement, what were those aspects?

A There were many. To cite the major ones, the internal road alignment of the Marcom plan we thought were not good

in the sense that it criss-crossed the property and divided the property into odd-shaped parcels which would be extremely difficult for future development.

It tended to encourage thru traffic through the property and it failed to disperse the projected traffic of development evenly around the peripheral roads.

It also failed to accomplish a separation of pedestrian and vehicular circles.

Another aspect we changed fromthe Marcom plan was to take the so-called Nassau Green which is the open space proposed in the Marcom plan, and have it linked up more directly with the existing and planned system of open spaces and parks throughout the County. The Marcom plan was arranged in such a way that the Nassau Green was completely surrounded by proposed buildings, and we made a connection linking Nassau Green more directly with the conservation clearing and therefore more directly with Eisenhower Park.

And we also regrouped the buildings proposed in the Marcom plan in such a way that the final development would have more clearly the benefits of a coordinated, large-scale, well planned development.

Q In realigning the roadways and providing for a change in the location of the open space, did you have in mind what the entire Mitchell Field development would look

like when completed?

A Yes, we have a concept of what the project would look like when completed, in very general terms. We began focusing in more specific terms on the initial parcels. When we proposed the preliminary urban design concept we fully expected that the -- that we are not dealing with detailed architectural designs or plans for the entire complex.

These were merely developed as general guidelines.

Q When you were here last you defined an urban design concept as follows:

"It is a physical design concept based on a given development program, defining the relationship between buildings, the relationship of circles to location of buildings, the relationship of open space to structures and building heights, setbacks, etc.."

What do you mean by a "given development program"?

A Well, in large scale development projects we -- very complex issues are involved and it is the practice that many types of consultants participate in such a project with various emphasis of expertise. And frequently a client would retain an economic consultant to determine the market

problems, because there was a tendency of practially everybody in every organization in the county trying to get the corporation to locate the facilities that they think the county needs in that particular tract of land.

Q It's true, is it not, that in preparation of your preliminary design concept you reviewed the recommendations and studies of the Bi-County Planning Board; is it not?

A Yes.

Q And you in fact summarized them for the Mitchell Field Development Corporation, did you not?

A Yes.

Q In terms of your meetings with Mr. Sweeney and Mr. Edmond, would you characterize those meetings as having been open meetings with give and take between you and Mr. Sweeney and Mr. Edmond?

A Yes, within the framework of client-consultant relations.

Q What do you mean by that?

A What I mean by that is that the client has the final say.

Q You indicated that in addition to meeting with Mr. Sweeney and Mr. Edmond you also made presentations to members of the Board of the Mitchell Field Development

Corporation.

Approximately how many such presentations did you make to the Board?

A I can't recall exactly. I would say about, maybe, four or five.

Q Four or five during the one year that you worked for the Mitchell Field Development Corporation; is that correct?

A Yes.

Q Were you familiar with the members of the Board of the Mitchell Field Development Corporation?

A I know who they are.

Q Did you know the backgrounds of the members of the Board of the corporation?

A Not beyond what was used for identification purposes in the Marcom report.

Q Did you know the members of the Board to be eminent citizens of Nassau County?

A Yes.

Q In the times when you made presentations to the Board, were those presentations well received?

A We thought so.

Q At the time that you made presentations did you enter into any discussion or any give and take with

members of the Board?

A There were question and answer periods.

Q What are the types of questions which members of the Board put to you?

A There were all kinds of questions. There were questions about building height, about density, about percentage of land covered by buildings, about circles, about the prospect for getting potential developers, about zoning.

Q Were there any other kinds of issues which they raised with you?

A Well, I want to explain to you that the presentations we made to the Board are not focused on the -- are not emphasized on the overall development.

The overall development was a very, very preliminary concept we developed so it was understood by the Board to be extremely flexible.

It was merely a framework to focus in on the initial parcels and much of the questioning deals with the initial parcels, and those aspects of the overall concept which affects directly the initial parcels -- in fact, our recommendation to the corporation was to adopt policy decisions only on those aspects that have a direct bearing on the initial parcels, and leaving fairly flexible, in fact, preserving the flexibility of the corporation for future decisions about the overall development concept.

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Q It is true, is it not, that you prepared a preliminary urban design concept for Mitchel Field; so that from the professional point of view, you would be able to better deal with the initial parcels; is that correct?

A Yes.

Q Did you recommend to the Mitchel Field development corporation that that would be the best professional way to proceed?

A No. We recommended that they should retain us or that somebody do a comprehensive plan, but the corporation explained to us that the dilemma they were in -- they said that they do not have the budget for a comprehensive plan, because revenue is not coming in to the corporation from the initial parcels, so as a stopgap measure, we prepared a preliminary design concept so that the initial parcels can move forward, with the understanding that it was the corporation's intention to then proceed with the comprehensive plan.

Q Now, getting back to the meetings which you had with members of the Board of the Mitchel Field Development Corporation, did they at any time indicate to you or did any members ofthe Board indicate to you what their concepts were for the over all development of the entire tract?

MR. JASPAN: Your Honor, I object.

If she wants their testimony, why doesn't she

call them?

THE COURT: Yes.

MR. JASPAN: It would be hearsay.

THE COURT: Sustained.

BY MISS THOMPSON:

Q Now, with regard to your initial work for the Mitchel Field Development Corporation, it is true, is it not, that you were involved in siting initial parcels which were part of what was conceived of as Phase I for the development of Mitchel Field --

A Yes.

Q (Continuing) Is that correct?

A Yes.

Q Could you tell the Court what was involved in all of Phase I of the development of Mitchel Field?

A Yes.

Phase I involves the initial parcels I have mentioned and a certain amount of housing which I cannot quite remember at this moment, I think it is about 1,400 units or thereabout--

Q And in addition to the parcels and units of housing, were there any other aspects involved in Phase I?

A I don't think so.

Q Were you asked at any time to site the 1,400 or whatever number of units planned for the Phase I?

A Not specifically, we have identified general locations for possible housing within the plan in the preliminary design concepts, but we were very specifically requested to site only the so-called initial parcels.

Q Did you indicate to the corporation how the housing would relate to the siting which you did for the initial parcels?

A No, because, you see, our assignment was not to site Phase I, our assignment was to site the initial parcels, which did not include housing, the only time we dealt with the siting of housing is in the over all urban design concept.

Q And in terms of the over all design concept, it is true, is it not, that you suggested to the corporation that the housing should be located in a place other than what the Marcom plan initially called for?

A That is correct.

Q Now, you indicated when you were here on Wednesd that there came a time when you ceased to do any work for the Mitchel Field Development Corporation?

A Yes.

Q Could you explain to the Court how it is that your work for the corporation came to an end?

A Well, the corporation was dissolved by the new County Executive, and that event rendered our client defunct.

Q Okay.

After Mitchel Field Development Corporation was dissolved, you indicated on Wednesday, there came a time when you began work for Nassau County; is that correct?

A Yes.

Q Will you tell the Court the time period which elapsed between when you began work -- between when you stopped work for the corporation and began work for the County?

A I think approximately nine months.

Q When you began work again for the County, who was it from the County, who first contacted you?

A Commissioner James Wells.

Q When Mr. Wells contacted you, did he indicate that the County was interested in retaining you to do work for the County with regard to Mitchel Field?

A Yes.

Q Did he indicate the type of work the County would like you to do with regard to Mitchel Field?

A Yes.

Q And what did he tell you?

A He indicated that he was -- that the County was interested in retaining us as continuing planning consultant to give advice and assist the County in the planning aspect of the development of Mitchel Field on a per assignment basis.

Q Before you were actually retained by Nassau County, during this nine month period, were there any times at which you had meetings either with Mr. Wells or with any other representatives of Nassau County, concerning the work that you had done for the development corporation?

A Yes, there was a meeting held with the County Executive and Mr. Wells, and others around March.

Q Would that be March of 1971?

A 1970.

At which time, the County Executive requested that we deliver the reports in question (indicating) to him directly

Q When you are speaking of the County Executive, are you referring to Mr. Caso?

A Yes.

Q Now, at this time, that you had this meeting with Mr. Caso and Mr. Wells and others, did you make a presentation of your plan for Mitchel Field to the point at which it had proceeded?

A We discussed the status of the plan that I prepared for the corporation, and we discussed the possibility of my firm continuing as consultants on the project.

Q When you refer to the direction by Mr. Caso that you deliver reports to him, were you referring to the three reports there sitting in front of you, Plaintiff's Exhibits

21, 22 and 23?

A Yes.

Q Okay.

Now, after this meeting -- first of all, could you tell me who was present at the meeting besides Mr. Wells and Mr. Caso?

A I cannot fully remember, I think perhaps Mr. Collins was present and Mr. Devivo.

Q Who is Mr. Collins?

A Mr. Collins, as I understand it is Deputy County Executive.

Q And what was the name of the other gentleman who was present?

A Mr. Devivo.

Q What is his position, if you know?

A He is, I think, Deputy -- I believe either Deputy County Executive or Commissioner of Fiscal Affairs.

MR. JASPAN: Mr. Collins is First Deputy County Executive, Mr. Devivo is Deputy for Fiscal Affairs.

BY MISS THOMPSON:

Q Now, at this meeting which you attended, were there any representatives of the Nassau County Planning Commission?

A No.

Q No?

A No.

Q How long did the meeting with Mr. Caso and Mr. Wells last in March, the 1971 meeting?

A About 45 minutes.

(Continued on next page.)

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Q About 4 or 5 minutes?

A 45 minutes.

Q And during these 45 minutes, you outlined your work with the corporation; is that correct?

A That is correct.

Q And during the course of that meeting, did Mr. Caso make any statements to you?

A Yes.

Q Will you tell the Court what Mr. Caso told you?

MR. JASPAN: If your Honor please, if Mrs. Thompson wants the conversation that went on that day, I think we ought to have it in context, what did he say to him and what did Mr. Caso say?

THE COURT: Yes.

MR. JASPAN: You just can't extrapolate one single statement --

THE COURT: Yes, what was said by you and what was said by him?

Q Go ahead and answer the question as set forth by the Judge.

MR. HYMAN: If anything, Judge.

THE COURT: If anything.

A Well, I described what we did for the corporation and the County Executive reminded me that the corporation had been

dissolved and that the County now takes responsibility to develop the project, and he said that he was in the process of forming a Mitchel Field policy committee within his administration and that Commissioner Wells is the key individual that I am to deal with.

We discussed the contractual, possible contractual relationship of our firm to the County, and he made it very clear that he wanted us to -- he wanted us to deal with only those areas that Mr. Wells assigned to us.

Q Now, it is true that you made a presentation of the work which you had done in your plan to that point, is it not, at that meeting?

A Not a full presentation, I referred to it, for example, to make a full presentation I would have had to brought along hundreds of pieces of the plan, and I didn't do that.

THE COURT: You gave a synopsis, is that the idea?

THE WITNESS: Yes.

Q It is true, is it not, that --

THE COURT: I don't see any context or continuance in what we are trying to get here. Even if you were to ask him questions for four weeks, this is not going to help.

MISS THOMPSON: Maybe this will help.

Q It is true, is it not, that during the course of your synopsis, you referred to plans for housing at Mitchel Field?

A Yes.

Q It is true, is it not, that when you refer to the plans for housing at Mitchel Field, something occurred at the meeting?

A Yes, there was a discussion about that, and the County Executive said that he made a decision that there would be no housing in Mitchel Field, and he explained that the reason he made this decision was because Mitchel Field is surrounded by housing, and hethought that the land in Mitchel Field can be better used for other purposes, that he felt the County needs it for such as cultural, recreational and commercial purposes.

THE COURT: Was he excluding all houses or excluding a particular type housing, or limiting it to some type of housing?

THE WITNESS: He did not elaborate, he just said that there will be no housing as such.

Now, I know that subsequently from working on the plan, there were senior citizen housing included on the Mitchel Field property --

THE COURT: So something must have happened

subsequently to that conversation in order to have that on the plan, subsequently something must have occurred to your conversation that you are talking about now?

THE WITNESS: Yes.

Q It is true, is it not, that Mr. Caso also said there would be no housing at Mitchel Field because e the people did not want it?

MR. JASPAN: She is examining her witness and she is leading the witness.

He testified to the conversation.

THE COURT: He did testify to it, yes.

Q Do you remember having your deposition taken in this matter on May 18, 1973?

A Yes.

Q Do you remember when Mr. Jaspan asked you, "When, where and in whose presence was this statement made"--

MR. JASPAN: If your Honor please, if she is trying to impeach her own witness, that isn't the way to do it.

THE COURT: He is here, you can ask him the question.

MISS THOMPSON: Mr. Liu is here under subpoena, he is the person who has worked for the County, he

is not here as our witness.

THE COURT: That doesn't change his character as a witness, it doesn't make him a hostile witness, it just makes him a plain witness.

He has not hesitated to answer, and I have watched him testify, he has answered.

You may not like what he says, but that does not make him hostile. His hostility must go much further than has been indicated, hostility is rebellious, vehemence, vindictiveness, lack of credence in the way a witness answers questions, that is hostility.

MR. BELLMAN: Could we have a minute, your Honor?

THE COURT: Yes.

MR. JASPAN: I am going to take a minute, too, your Honor.

THE COURT: Does anybody else want to take a minute?

(A short recess was taken.)

(Continued on next page.)

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THE COURT: Are we ready?

Miss Thompson, are you ready?

MR. JASPAN: Yes.

THE COURT: We are ready.

MISS THOMPSON: Your Honor, it is plaintiff's position that Mr. Liu is an unwilling witness, he is here because of the fact that he was worked for the Mitchel Field Development Corporation and has been under contract to the County.

He is in process of negotiating a new contract with the County.

It is our position that he should be treated under Rule 43 (b), not necessarily as a hostile witness, but because Rule 43 (b) also refers to an unwilling witness, in addition --

THE COURT: There is nothing in his testimony to indicate that this man will not answer a question, nothing whatsoever, he answered every question you have asked him frankly.

His testimony, if anything, is more or less indicated to your side of the case rather than anybody else's side of the case. Whatever has developed so far, I have heard, there has been nothing damaging

* * *

MISS THOMPSON: Let me ask the question before you object. Then you can object.

MR. JASPAN: I just object--

THE COURT: He can object to form at any time.

MR. JASPAN: She wants to read in something that's on her mind, whatever that is, in the form of a question so that it will be in the record because then she wants to feed it to the witness but it's your witness.

You can't ask him that way.

BY MISS THOMPSON:

Q Mr. Liu, did Mr. Caso give any indication to you as to what the people thought about housing at Mitchell Field?

A Yes.

Q What did Mr. Caso say to you?

A He said the people didn't want it, for the reason that he explained to me.

Q And what reason was that?

A I told you that earlier.

Q Okay.

Now, after you had this meeting in March of 1971 at which Mr. Caso and Mr. Wells were present, did you have

any subsequent meetings with either Mr. Caso or Mr. Wells, before you were retained to work for Nassau County?

A I don't think so.

Q At the time that you began work for Nassau County, did you receive all of your assignments from Mr. Wells?

A Yes.

Q What are the types of assignments which you've been given to do by Mr. Wells?

A We were assigned -- well, we -- Mr. Wells and I make up a work assignment list. That would cover work for the subsequent two months. Among the assignments are the development of the concept for the so-called Santini properties.

Another assignment was to assist Mr. Wells in the discussions and negotiations and reviews of the proposals from prospective developers for the hotel.

We gave advice and assistance on the siting of the County Reference Library. We assisted in the siting of a temporary bank facility, which was -- which would go into the hotel at such time when the hotel is completed. And numerous other assignments of that nature.

Q Have you done any work for Mr. Wells on an overall design for Mitchell Field?

A No.

Q Have you received all of your assignments from Mr. Wells?

A I don't fully understand.

Q In all the tasks which you have performed since you began your contract for Nassau County, did you receive all of your job assignments from Mr. Wells?

A Yes.

Q Have you met with Mr. Wells during the course of your work for Nassau County?

A Frequently.

Q How frequently?

A Oh, sometimes weekly but at least once a month.

Q Have you met with anyone else besides Mr. Wells?

A Yes. Mr. Wells would bring in others from time to time, as the problems of Mitchell Field concerned them.

MR. JASPAN: If your Honor please, I'm not going to object on the ground that the questions are improper. I just think they are irrelevant and unduly prolonging this. It's a very interesting recital.

THE COURT: He could have spoken to people in California eventually, if you keep this up. Just don't prolong examination. That's all

to it. Already been answered.

MISS THOMPSON: Okay.

Q The plan which is sitting in front of you discusses housing at Mitchell Field, does it not?

A Yes.

Q Can I ask you to turn to page -- Roman Numeral page 27 of the first volume?

A Yes.

Q Now, would you read the last line of that page continuing on to Roman Numeral page 28 under the statement "Housing"?

A "Housing: From a planning point of view, housing is considered as one of the necessary land uses at Nassau Center if a balanced and truly vital center is to be achieved.

"However, the amount and type of housing at Nassau Center should be planned within the framework of a countywide housing policy.

"Internal planning considerations of Nassau Center alone cannot be expected to provide solutions to countywide housing problems."

Q Now, at the time -- at the time that these statements were written, was it your opinion that from a planning point of view, housing is considered as one of the

necessary land uses at Nassau Center?

A Yes.

Q And so that the record is clear, is Nassau Center Mitchell Field?

A Yes.

Q Would you answer?

A Yes.

Q Okay.

Is that your opinion today?

A It's -- it is still my opinion today, but may I point out that again we were urging everybody to look at Mitchell Field in his regional and community context.

Now, if Mitchell Field were a new town in the desert, then without housing it would not be a vital center. But it is very obvious that Mitchell Field is situated in a sea of housing and that the legal boundary lines do not isolate the project.

So it is a difficult assertion to say that despite the fact that there is no housing within the legal boundary lines of Mitchell Field, that Mitchell Field as a development complex does not have housing.

Q Now, you -- the statement which you just read also refers to the framework of a countywide housing policy.

At the time that you wrote that statement,

were you aware of the existence of a countywide housing policy?

A No, but I was aware that the County Executive has a appointed a Housing Coordinator.

Q Are you aware of the existence of a countywide housing policy today?

A No.

Q May I direct your attention to page 46 of the same volume?

Would you read the second full sentence in the first paragraph?

A "Housing is an integral part of the initial phase."

Q Was that your opinion at the time that you wrote that sentence?

A No, it was not an opinion, it was a statement by the corporation. The corporation identified what the first phase was and what was to be concluded in the first phase.

Q Is it a statement to which you subscribed?

A I have no opinion one way or another. It's -- I would not have any more opinion than if they excluded the hotel from the first phase.

Q Let me direct your attention then to pages 106 and 107 of again the first volume.

Would you read the section under "Housing."

12 Liu - direct

A "Housing, from a planning point of view, a balanced development of the scale of Nassau Center must include the proposed mix of land use to be a truly vital center. This is necessary -- this necessarily includes an appropriate amount of housing to provide the needed community character and nighttime activities when the working population in the project leaves their offices.

"The question of what is proper -- what is the proper role of Mitchell Field in response to the housing needs of Nassau County can only be answered within the larger context of a county-wide housing policy.

"The internal planning considerations of Mitchell Field alone cannot independently provide any intelligent and local basis to the housing problem of the County.

"Comprehensive planning efforts for Mitchell Field should maintain flexible options to fullfil its proper role in accordance with a countywide housing policy adopted by the County Government with consultation and advice from the County -- from the Nassau County Planning Commission and other planning and economic development agencies

in the region."

Q Now, at the time that you wrote that statement, it was your opinion, was it not, that from a planning point of view, a balanced development of the scale of Nassau Center must necessarily include housing?

A Yes, but again I refer back to the statement earlier. I would like to point out to you that there was the intention of the corporation at that time and the general community attitude, in addition, that the intensity of development at Mitchell Field should not violate the suburban physical characteristics, which means that it should leave a large amount of open space, very minimum building coverage and there was talk about between 10 to 15 percent of the land to be covered by building and the remaining part free.

So it's a myth to think that there is a lot of land available for development at Mitchell Field, you see.

So when you look at the larger context and if you make a list of what facilities are wanting, housing comes fairly much down the list.

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Liu-direct

Q Okay. Now, Mr. Liu, when you speak of the proposal to leave 10 to 15 percent of Mitchell Field vacant, that was a proposal of Marcom, Incorporated; was it not?

A Yes.

Q It was also Marcom's proposal to put 9,000 units of housing at Mitchell Field, while leaving 10 percent of the land covered; was it not?

A Yes.

Q Okay.

A But may I point something out?

Q No, just answer my question.

A Okay.

MR. JASPAN: Wait a minute. That was a question, I presume, so he ought to be able to answer it.

MISS THOMPSON: He answered my question.

MR. JASPAN: No, you made -- he wants to answer it. I don't know what he is going to answer, but I think the witness ought --

THE COURT: If you remember it, you ask him later.

MR. JASPAN: She makes a statement of a question, and then she doesn't want the witness to answer.

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total report.

MISS THOMPSON: I would submit that Mr. Jaspan is giving the Court his interpretation of what the memorandum is, and not what in fact the memorandum represents.

BY MISS THOMPSON:

Q Would you read the paragraph to the Court?

A Which paragraph?

Q Paragraph --

THE COURT: Go ahead.

THE WITNESS: "Liu recommends from a planning point of view that housing needs to be part of Nassau Center, from both the view of the needs of the county and the type of environment that housing creates in the project. Without housing, there is a danger that housing may turn out to be a sterile and unlively place after work hours. However, political decisions external to purely planning of considerations may govern in this issue."

BY MISS THOMPSON:

Q Would you tell me --

MR. JASPAN: Can we have the date of that memorandum put in the record, please?

housing for a variety of income groups.

Do you recall that testimony and the various press releases when you were here last time?

A Yes.

Q Now, you also stated during your testimony last time on page 468 of the transcript, when asked "Are you in favor of senior citizen housing on the main tract other than Santini property" you answered, "No, I don't see how senior citizen housing would be compatible with the plan that I have outlined."

Excuse me. I want to go back to a question before that.

You were asked "It's your position, is it not"

MR. JASPAN: Where are you reading from?

MR. BELLMAN: Page 468.

MR. JASPAN: Thank you.

Q "It's your position, is it not, that housing should not be developed on the main tract of Mitchell Field; is that correct?"

And your answer "Outside of senior citizen housing, I think that has been my position consistently, yes."

Then again on page 435 you were asked:

"Mr. Caso, is it also your position that housing in the basic tract of Mitchell Field be inconsistent

with a civic educational and cultural purpose?"

And the answer, "Yes, I think it would be because when you consider the area is not an island unto itself, is not isolated, and as you look at the map you can't see it. It is surrounded by residential communities."

Also on page 485 you state, "It was never bought" -- Mitchell Field -- "...was never bought for housing because of the fact that even back in 1961 and even after that, the County has no housing powers so it was never contemplated that this property would be acquired for housing."

Now I ask you whether or not your statements concerning your position on housing at Mitchell Field, that you were consistently against the inclusion of housing, whether that statement is consistent with the proposals made by your administration while you were the Town Supervisor at Hempstead in 1966?

A Yes, I believe it is consistent because when we talked the time frame to which you refer, about Mitchell Field, and the property that the county acquired of 435 acres, that that unit unto itself was never considered for housing purposes.

Subsequently, the GSA declared this additional $191 acre surplus, and as the then-presiding Supervisor of the Town of Hempstead, having housing powers and jurisdiction,

I submitted a plan to the GSA, which has been referred to in the testimony, which called for some form of housing based on the authority to build it, primarily senior citizen housing and, as we know, the county opposed that plan, opposed the application and, indeed, succeeded because the GSA rejected my proposal at that time and gave the property to the county.

So that I think I have been consistent with my stand on housing as far as the Mitchell Field complex is concerned, and I would also at this time like to draw the distinction relative to my position which has been consistent throughout, that we would not have at any time any high-rise, high-density housing at Mitchell Field.

Q Well, let me ask you a few questions with respect to your last statement.

First, are you today then saying that you would not -- you would oppose or you would not oppose housing units at Mitchell Field, if they were low-rise, garden apartment-type structures?

A What I am saying is that in the context of today, or going back even to 1971, when I assumed the office of County Executive, that conditions had changed in the allocation of uses of the Mitchell Field complex for those facilities that would serve the entire county, and that in the light of the

various changes that had taken place, which I'm sure we can detail as we go forward with this case, that the situation has changed relative to any kind of housing other than the senior citizen housing, which I had approved initially for that area known as Santini.

So that when you talk about whether it's low-rise or high-rise, conditions have changed. I would not favor any housing within the Mitchell Field complex known as the overall area which is the subject of this case.

Q And that would include the area that the county acquired? That portion that was in issue in 1966?

A Yes, it would, because of the plans that have developed since then and other factors which have entered into the case, one important one being the 67 acres of that had been deeded to the county for a park and that at the time was not known when the application was made in '66 or thereafter.

Q Now, that was the next question I was going to ask -you.

First of all, when did the situation change so that housing no longer would have been -- would be appropriate for the main parcel of Mitchell Field?

A What do you mean when you say "main parcel"?

Q I mean the overall -- what -- the complex.

A You mean the 435 plus the 191?

Q Yes.

A This is after the county had acquired from the GSA the 191. I think that fact in itself changed it because the plan that I had submitted for the Town of Hempstead, which would have called for housing, was rejected by the GSA, was opposed by the County of Nassau and when in fact the GSA deeded the property to the County of Nassau, their plan did not contain housing. And that area was set aside instead for an industrial development because of its proximity to the railroad siding, because of its location relative to other businesses and industrial development on Stewart Avenue, which adjoins this tract, and the change in the conditions that were effectuated as a result of the county's application.

Q Well, if I understand what you are saying this morning, the circumstances which you have pointed to so far, which constituted a change of situation, include the fact that GSA deeded 67 acres of the Mitchell Field complex for a park? That GSA opposed the town's proposal in 1966, which included housing; and the county opposed the --

MR. JASPAN: If your Honor please, the witness never said GSA opposed it. He merely said that they rejected a proposal which was made by the town and favored one that was made by the county, which provided for industrial use and

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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ABDON ACEVEDO, et al.,

Appellants,

-against-

NASSAU COUNTY, et al.,

Appellees.

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No. 74-1235

CERTIFICATE OF SERVICE

This is to certify that two copies of appellants' brief and one copy of appellants' appendix were served on counsel for each of the appellees on March 1, 1974, as follows:

Service on Joseph Jaspan, counsel for Nassau appellees, and service on Albert Leone, counsel for Hempstead appellees, was accomplished by hand delivering said copies pursuant to agreement to Kevin Rein, a representative of the Nassau County Attorney's Office, at the Clerk's office. Service on Cyril Hyman, counsel for federal appellees was accomplished pursuant to agreement between counsel, by leaving said copies with the Court Clerk's office to be picked up by a messenger.

Dated: March 1st, 1974.

Richard F. Bellman

RICHARD F. BELLMAN